PROCEEDINGS OF COUNCIL OF GOVERNOR GENERAL OF INDIA

VOL-XXVIII 1889

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1890

ABSTRACT OF THE PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

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LAWS AND REGULATIONS,

1889,

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CALCUTTA:
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1890.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 4th January, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
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The Hon'ble F. M. Halliday.
The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Durga Charn Laha, C.I.E.
The Hon'ble Maung Ôn, C.I.E., A.T.M.

NEW MEMBER.

The Hon'ble MAUNG ÔN took his seat as an Additional Member.

MADRAS CORONER'S BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to abolish the office of Coroner of Madras be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Mahárájá of Vizianagram and the Mover.

The Motion was put and agreed to.

BURMA RURAL POLICE BILL.

The Hon'ble MR. HUTCHINS also moved that the Hon'ble Maung Ôn be added to the Select Committee on the Bill to provide for the Establishment of a Village-system and amend the Law relating to Rural Police in Lower Burma.

The Motion was put and agreed to.

The Council adjourned to Friday, the 18th January, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 4th January, 1889.

Government of India Central Printing Office.—No. 306 L. D.—4-1-89.—316.—A. E. deS.

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The Hon'ble Maung Ôn, C.I.E., A.T.M.

METAL TOKENS BILL.

The Hon'ble SIR DAVID BARBOUR presented the Report of the Select Committee on the Bill to prohibit the making or issue by private persons of pieces of metal for use as money and the making of coins in resemblance or similitude of coins of Foreign States.

The Hon'ble MR. STEEL said:—"Under ordinary circumstances the proper occasion for discussing the principle of this Bill should have presented itself on the Motion to refer it to a Select Committee, but, as that stage was passed at Simla, I take the first opportunity of making a few observations. The Hon'ble Mr. Westland, when introducing the Bill, clearly showed the need for legislation to protect the public from the loss and inconvenience caused by the present condition of the copper currency, and to secure for the revenue any profit which may accrue from the issue of token coinage. There will be general agreement

concerning the nature of the evils to be remedied, but there is room for difference of opinion regarding the best means of accomplishing this object.

"The Bill proposes to prohibit the manufacture and importation of unauthorised coin and to forbid the receipt of such coin by any local authority or railway administration, but it does not prohibit the ordinary circulation of the coin now in existence. It thus appears that the Bill strikes at only one of the evils that have been described. It does not propose to redress the existing inconvenience to the public, and may even increase this inconvenience by depriving the holders of those coins of some of the outlets by which they could have got rid of them.

"The Bill will certainly tend to secure for the revenue the profit accruing from the issue of token coinage, but it will only partially achieve this object. While the circulation of unauthorized coin is permitted there will be temptation to import it, and the importation can only be effectually prevented by stringent inquisitorial and punitive measures which the Government will be unwilling to put in practice. It will be observed that the Committee, for good and sufficient reasons, recommend that offences under this Act shall not be cognizable; that is to say, the law shall only be put in force under the order of a superior Magistrate, and the police shall not be allowed to interfere with the public of their own motion. Under these conditions preventive measures cannot be completely successful. Now, my Lord, we could have effectually accomplished all our objects by preventing the circulation of unauthorized coin altogether. In this case it would have been necessary in the interests of the poor that Government should undertake the buying up of all the pieces of metal in circulation by giving in exchange for them our own current copper coins. It would also have been necessary to give long notice—possibly two years' notice—of the intended conversion. With these safeguards the interests of both the public and Government would have been completely served, and it remains only to consider whether the cost of conversion could have been prohibitive. Now, it is understood that at the ruling exchange these pieces of metal are worth intrinsically more than our own copper coins, and the operation might presumably be carried out at small cost. The production of the large quantity of coins required might cause a strain upon our Mints, but these are not fully employed; and if necessary we might import coin from Birmingham, and probably do this as economically as we can make it for ourselves.

"If such a plan were adopted, it might possibly be found that the interval of two years might be employed to pour unauthorized coin across our frontier,

but, if this apprehension were justified, there would be much less objection to stringent preventive measures to be adopted for a limited period, than to the same measures which under the present Bill may possibly become a permanent administrative necessity.

"Having said so much, my Lord, I may be asked why I have signed the report of the Select Committee recommending the passing of this Bill. To this the reply must be that it is not my function to initiate legislation but to advise upon measures brought before this Council by a responsible Government.

"I think the Bill will do some good in itself. I believe it proceeds in the right direction, and I hope it may lead the way to the bolder and larger measure which, in my opinion, will alone be completely successful. I look upon the Bill as a palliative in preparation for a radical cure."

The Hon'ble SIR DAVID BARBOUR said:—"I should like to explain very briefly why the more stringent measures recommended by the Hon'ble Mr. Steel have not been adopted. Like him I am of opinion that these pieces of metal in resemblance of coin should not be allowed to circulate as money. But, if the Government were now to offer to buy up the whole of the unauthorized currency in circulation in the country, it must do so either at its value as copper—a course which would impose great loss upon the present holders of such coin, persons who are quite innocent holders—or it must offer to buy these pieces of metal at their nominal value, a course which would involve considerable loss to Government. Another objection is that, if it were known that we were buying these pieces of metal at their nominal value, they might be largely manufactured in order to be sold to the Government, and we should be buying copper at a large percentage above its real value.

"But a still more serious objection is that, in many districts of India, these pieces of metal are in common circulation, and the people are not accustomed to the use of our coin; it would be a severe measure entirely to prohibit the circulation of coin to which people are accustomed, and might cause great confusion in remote bázárs and villages and among ignorant people. On the whole, therefore, I think the course which the Select Committee has taken is the best; that is, that we should prevent the manufacture of these pieces of metal as far as possible, and prevent them from being imported into British India and put into circulation, and take some steps towards discouraging their use. If we find hereafter that the quantity of unauthorised coin is increasing in circulation, it will no doubt be necessary to take some further step such as

that suggested by my hon'ble friend. I hope that may not be the case, but, if it is, it will have to be dealt with by further legislation in the way proposed."

The Hon'ble SIR CHARLES ELLIOTT said :—" I have only one remark to make in reference to what has fallen from the Hon'ble Mr. Steel, who made the suggestion that, whereas the Government will incur considerable loss in buying up this coin and withdrawing it from circulation, it might be able to recoup itself by the gain which will be obtained by the issue of its own copper coinage in the place of that which is withdrawn. I may mention that on behalf of the Finance Committee I undertook the investigation of the accounts of the Mints two years ago, and we came to the conclusion (in which I believed the Financial Department also agreed) that the gain on the copper coinage was extremely small, and in fact almost infinitesimal, and there would probably be no such profit to Government from the circulation of its own coin as the Hon'ble Mr. Steel has suggested."

SALT-DUTY BILL.

The Hon'ble SIR DAVID BARBOUR also moved for leave to withdraw the Bill to regulate the payment of duty in respect of Salt where there has been an alteration of the rate of duty payable in respect thereof. He said :—

" The circumstances under which it was thought necessary to introduce this Bill were explained by the Hon'ble Mr. Westland when the Bill was introduced in July last.

" The sufficiency of the grounds for the proposed legislation are beyond question. It is a cardinal principle of all taxation that as little as possible should be taken from the pockets of the people over and above what is added to the revenue of the State. But the first proviso to section 37 of the Sea Customs Act, 1878, operates in the direction of taking money from the public which is not added to the revenue of the State but merely put into the pockets of those importers of salt who are fortunate enough to have their ships at sea when the rate of duty on salt is raised. Proceedings of this nature are wholly unjustifiable, and I do not propose to withdraw the Bill on the ground that its provisions are unnecessary or inexpedient, but on the general ground that the Bill does not go far enough, that, in short, the law which it was proposed to apply to salt should also be applied to all other imports.

" There is as little justification for transferring money from the pockets of the public to the pockets of a small number of importers of (we will say) iron or

steel, chosen at hazard, as there is for transferring money in the same way to the pockets of a few fortunate importers of salt.

"The principle on which the present Bill is based was recognised by the Hon'ble Mr. Westland to be as applicable to the imports of other goods as to the imports of salt, though the amount of money at stake may not be so great, in proportion to the value of the goods, as in the case of salt. But since the Bill was introduced the Secretary of State for India has suggested that the proposed legislation should be made applicable to all imports and not to salt alone; and I believe I am correct in saying that the members of the Select Committee to whom the Bill was referred were unanimously of the same opinion. The proposal to withdraw the present Bill is, therefore, merely preliminary to my moving for leave to introduce a Bill dealing in the manner proposed with all other articles of import as well as with salt, and needs no lengthy justification at my hands.

"I may as well mention that the proposal to deal with the whole question in a comprehensive manner must not be taken to indicate that the Government of India has any intention of re-imposing the import-duties."

The Motion was put and agreed to.

SEA CUSTOMS ACT, 1878, AND INDIAN TARIFF ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also moved for leave to introduce a Bill to amend the Sea Customs Act, 1878, and the Indian Tariff Act, 1882. He said :—

"In moving for leave to withdraw the Bill to regulate the payment of duty on salt I have already indicated generally the nature of the legislation which is now proposed, and I need not go over the same ground again.

"The first proviso to section 37 of the Sea Customs Act, 1878, runs as follows :—

"Provided that, when such rate or valuation has been raised after the grant of port-clearance at the port of shipment, the rate and valuation applicable to such goods shall be the rate and valuation in force on the date of such grant."

"This is the proviso which, for reasons with which this Council is now familiar, it is proposed to entirely repeal. This proviso met with much opposition when it was first proposed. I do not think it will find a single defender in the present day, and, so far as I am aware, no similar provision is to be found in the laws of any other country. I need not waste time by considering it any further. But, on repealing this proviso, it is proposed to substitute for it in the Indian Tariff Act, 1882, a provision which met with opposition when the present Sea Customs Act was being passed into law, and which in consequence of such opposition was not inserted in the Act as finally passed. I refer to a provision under which, if a contract is made for the sale of goods without any stipulation as to payment of duty, and a duty is imposed, or the previously existing rate of duty raised or lowered, before the contract is fulfilled, the buyer or seller, as the case may be, has the right of lowering or raising the price by a sum equal to the rate of duty imposed for the first time on the goods, or by the amount by which such duty has been either raised or lowered. An almost exactly similar provision is found in the English law, and I confess I can see no valid objection to it. If it is inoperative in any case, it does neither harm nor good, and whenever it is operative it removes what might be a serious risk. It has been said that this risk of the alteration of duty, or the imposition of a new duty, is a fair mercantile risk, and that no legislation is required. I trust that I may not be considered an advocate of unnecessary legislation, but I do hold the opinion that all risks are an evil, and that the fewer the risks to which commerce is exposed the better; all that is claimed for the proposed change is a full and fair consideration on the merits.

"And, as we are dealing with the Indian Tariff Act, it is proposed to make one or two slight changes with a view to clearing up doubt as to the meaning of the Act. The first change is merely the alteration of the position of a bracket in the schedule in the Act which has on one or two occasions caused doubt as to whether the words 'all other sorts' meant 'all other sorts of gunpowder' or 'all other sorts of arms, ammunition and military stores.' The latter is the correct interpretation, and this will now be made clear.

"The other alteration is merely the defining of 'arms' and 'ammunition' in the sense in which these terms are used in the Indian Arms Act, 1878, and the application to the Indian Tariff Act of the same procedure for declaring what articles come under the head of 'military stores,' which is at present in force in the Indian Arms Act.

"That procedure enables the Governor General in Council, by notification in the Gazette of India, to declare from time to time what articles shall be included under the head of 'military stores' for the purposes of the Indian Arms Act, and it will obviously be convenient that the same procedure should be followed under the Indian Tariff Act."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local Official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 1st February, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 23rd January, 1889.

PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.—NO. 345 L. D.—23-1-89.—316.—C. H. L.

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The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble Maung Ôn, C.I.E., A.T.M.

METAL TOKENS BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Report of the Select Committee on the Bill to prohibit the making or issue by private persons of pieces of metal for use as money and the making of coins in resemblance or similitude of coins of Foreign States be taken into consideration. He said:—

"I wish to take the opportunity of explaining briefly the nature of the changes which the Select Committee has recommended. Before doing so I may explain that a few verbal amendments have been found to be necessary in the Bill as reported by the Select Committee; they are purely verbal and formal alterations and I shall deal with them separately hereafter.

"The main objects of the original Bill were to prohibit the making of pieces of metal by private persons for use as money, to prohibit the import of such pieces of metal into British India, and to prohibit the putting of such pieces of metal into circulation for the first time, and these continue to be the main objects of the Bill as amended by the Select Committee.

"But, in order to carry out more fully the object of the Bill, the Select Committee has made the attempt to put pieces of metal into circulation as money for the first time punishable, as well as the actual putting into circulation, and has also made it an offence to be in possession of such pieces of metal with intent to put them into circulation for the first time.

"The object of the Select Committee in making these changes was to prevent persons from dealing in such pieces of metal with a view to their issue, and to these alterations, I think, no objection can be taken. In order that no person who is now in possession of such pieces of metal may be taken by surprise, the Committee has recommended that possession with intent to issue shall not be punishable till a period of three months has elapsed from the coming of the Act into force.

"Section 3, sub-section (5), of the original Bill conferred the power of search on police-officers in charge of stations. For this sub-section the Committee has substituted the provisions of section 98 of the Code of Criminal Procedure in respect to counterfeit coin. Consequently a police-officer will not be able to make a search of his own motion, and will only be able to proceed under warrant issued by a Magistrate.

"The Select Committee has also recommended that none of the offences punishable under section 4 other than the manufacture of pieces of metal for use as money shall be cognizable offences, and that the other offences referred to in that section shall not be taken cognizance of by a Magistrate outside the presidency-town without the previous sanction of the District or Subdivisional Magistrate. Several of the terms of imprisonment provided in the original Bill have also been materially reduced. These changes, as well as the restriction on the right of search just referred to, afford a valuable guarantee that the provisions of the Act shall not be abused. Indeed, the only question is whether the Select Committee has not gone too far in relaxing the provisions of the original Bill. The receipt of pieces of metal as money by railways and local authorities was prohibited in the original Bill. This prohibition has now been made effective by providing that the receipt of pieces of metal as money

by any person acting on behalf of a railway administration or local authority may be punished by the infliction of a slight fine not exceeding Rs. 10.

"Section 6 of the original Bill made it penal to manufacture coin in resemblance of coin of a Foreign State which was a legal tender or which actually circulated in such State. If this provision had been maintained, it would have afforded greater protection to foreign coin than to Queen's coin. This result was one which it was impossible to justify, and the difficulty has been got over by adding an *explanation* to section 28 of the Indian Penal Code to the effect that a person who makes one thing to resemble another shall be assumed to intend the natural consequences of his action, namely, that some person should be deceived by mistaking the one for the other. Good authorities have held that this was always the law, but the *explanation* to be added to section 28 will put the matter beyond doubt; and, if hereafter any person is found imitating either foreign coin or Queen's coin, it will be assumed, unless he can prove the contrary, that he intended to practise deception. He will consequently be punishable for counterfeiting coin."

The Hon'ble RÁJÁ DURGA CHARN LAHA said:—"The principle of this Bill was fairly discussed at the last meeting of the Council. The Bill was professedly a half-and-half measure, and, like all half measures, it cannot be expected to be very effective all at once; but, in view of the explanation afforded by the hon'ble member in charge of the Bill, I think it should be allowed a fair trial. The provisions against the making and issue of metal tokens are stringent enough and likely to discourage the making or use of them. On the whole, I see no objection to the passing of the Bill."

The Hon'ble THE MÁHARÁJA OF VIZIANAGRAM said:— "As far as its main objects of prohibitory and monopolising nature of coinage of the Empire are concerned, there can hardly be two opinions as to the great expediency that will be effected, by the coming into force of this Bill, in securing both economical and administrative advantages to the Government, in harmony with the universal laws of currencies in different parts of the world, which, like so many other essential principles of government, prove profitable to the ruling power immediately, and to the subjects mediately. The Hon'ble Mr. Macaulay says, in his answer to the Secretary in the Legislative Department, that His Honour the Lieutenant-Governor thinks that, by the success of this Bill, the profit that is now shared by the manufacturers in Nepal and by the money-changers in India would go to the Indian tax-payer. So,

that the Bill is one of urgent legislative importance cannot be doubted for a moment; but at the same time, I think, I should be found wanting in duty if I were not to lay before your Excellency and this august body a few facts relating to the Bill on this, perhaps, my last opportunity of saying anything regarding the Bill. It is as much a matter for regret as of surprise to me, and I think to every one else who might spare a thought on the subject, that its legalization has not taken place long before now; for, apace with the time, the evil against which this Bill is to militate has struck deep root into the land over large areas, not only in the northern but also in the southern parts of the Empire, with this difference, while they are coined and put into circulation in the north, in the south they are not coined, but they find a ready circulation, or rather, I should say, that they supply a very needy want, being the only handy means of exchange among the poorest agricultural classes, of whom, to the number of millions, inhabit, as far as my direct knowledge goes, throughout the Northern Circars, the population in its average density being about 353 per square mile, and the aggregate figure for the four districts comprising Northern Circars being no less than 7,574,737. I hope to be able to show further on that the knowledge of the existence of copper token currency down in the south as well is not devoid of interest to this Government, when viewed in connection with opinions favoured by some of the authorities of either of the presidencies. Mr. H. G. Turner, our esteemed Collector of the Vizagapatam District, has contributed most valuable information which seems to be consonant with the consensus of the unions akin to that held in France, and issued its coin under the name of Latin Mint. I will read a passage or two, which run as follows:—

'There can be no free trade in labour and goods when there is not free coinage. We recognise this principle in the matter of silver coins, but depart from it when we deal with copper money.'

"I beg to draw particular attention to the following passage of his:—

'The money, the principal money of rural India, is copper, not silver.

'Indian copper coin is not token coin in the same way that pence are tokens in England. Pence are in that country subsidiary to the daily-wage rate, which is expressed in silver. In India copper is the principal wages-paying coin. It is true that, as gold is the standard coinage metal in England, silver tokens are likewise unfair to the interests of her labouring classes; but, inasmuch as the difference in metal value between gold and silver is vastly less than the difference between silver and copper, the harm done to labour in England is not so much felt, though that it is felt is obvious from the clamour now raised on the bimetallic question.

'Not being really tokens, and not occupying the place of subsidiary coins for gha labour, they are not subsidiary; and not being actually convertible into standard coin, because no one can change a half or a quarter anna copper piece into silver, it follows that this coinage is nothing but an imperfectly convertible currency, akin in many respects to an inconvertible paper currency.

'Circulating side by side with silver, it interferes with the rise and fall of prices which are governed by free silver and free commerce; for the forces which regulate those prices are in no way connected with the force which governs the issue of copper money.

'The copper coin is issued to the public at the expense of silver coin. Mr. Westland says that this profit is rightfully the property of the tax-payers. But, inasmuch as the loss falls ultimately on labour, it is really a case where the richer portion of a community benefits at the expense of the poorer portion.'

"In paragraph 6 he says—

'So far as I have been able to calculate, * * * there is in circulation in India not more copper coin than to the value of ½ pence per head. * * * Perhaps copper coin to the value of 250 lakhs of rupees has been issued since 1835. About 97 lakhs were issued up to 1858. I have no account from 1858 to 1873, but I think the issue fell off during these years. From 1873 to 1884, 92 lakhs were issued. * * * The next following issue was of 1874, succeeded by coins of every year up to 1886, except 1880.'

"Making allowances for the coins dropped and lost,—10 per cent. for the dropped and 10 per cent. for the waste of the coins,—he says—

'if we guess * * * this would reduce the amount of copper in circulation to 200 lakhs of rupees, or twenty millions of rupees of copper for use amongst 250 millions of people. If the rupee = 1*s.* 6*d.*, this gives a *per capita* distribution of 1½d. This amount is very sadly beneath the amount of copper coin current in other countries. Italy, for instance, had, when Professor Jevons wrote his work, 29½ pence per head, England 8½ pence. France 15 pence, and Belgium 21½ pence. Now, it is the opinion of some very able economists, Roseber for instance, that the poorer a country is the larger should be its circulating medium. Hence we may take it that a proper amount per head of copper coin for India would run to some figure vastly in excess of these European rates.'

"He also speaks very correctly that—

'in this connection I would remark that the complaints now springing up as to the hardships of the increased salt-tax are in some measure due not to the enhanced price but to the actual want of copper coins to permit of the people purchasing salt in petty quantities. In rural parts of this district there is such a deficiency * * * that transactions are to a great extent effected by barter, and in remote parts cowries are still in circulation.'

"These facts are very clearly and cleverly set forth by Mr. Turner, and I doubt not that, by other executive channels, these evils will be soon remedied; hence and therefore I have nothing else to say in regard to the passing of this important Bill."

The Hon'ble SIR DAVID BARBOUR said:—"In answer to what has fallen from the Hon'ble the Mahárájá of Vizianagram, I should like to say a word or two. It has been for many years a standing order of the Government that copper coins are to be supplied wherever they are wanted, and every Collector of a district is bound to see that the treasury has a full supply of copper coins and to issue them at a fair rate in exchange for silver. Any person who wants copper coins can always get them from the treasury at a fair rate, and, if in the tracts referred to by the Mahárájá there should be any want of such coin, it is the duty of the Collector to see that the necessary steps are taken to meet this want. I merely wish to point out that the Government has already done all that is in its power in order to ensure that there is a sufficient supply of small coins in all parts of the country."

The Hon'ble THE MAHÁRÁJÁ OF VIZIANAGRAM, in answer to the remarks of the hon'ble member in charge of the Bill, said:—"I am aware that Mr. Turner did bring these facts to the notice of the Madras Government, but somehow or other I find, from the remarks made by the then Secretary to the Madras Government, that he could not clearly see the facts, and therefore he did not pass any opinion as to the propriety of Mr. Turner's remarks."

His Honour THE LIEUTENANT-GOVERNOR said:—"As the discussion has been raised at this particular stage of the Bill, when the Motion before the Council is to take into consideration the Report of the Select Committee, I may say the few words I have to say now. If I had been in my place a fortnight ago when the Hon'ble Mr. Steel took part in the debate, I should have felt it my duty to support the hon'ble member's view that the Bill does not go far enough to effect what the Government have in their mind. The answer which the hon'ble member in charge of our finances gave us was to the effect that the alternatives were either to inflict great hardship or to buy up the existing amount of token coinage in circulation at a considerable loss to the Government. I must say that after thinking over his answer I do not see my way to contest the truth of his assertion that we have nothing but these two alternatives before us whether now or later, and we shall have to adopt one or the other of them. But the difficulty in the way of this Bill, leading even as a first step towards getting rid of the copper coinage called Goruckporee pice and generally spoken of as dumpy pice, was very great. The hon'ble member was

perfectly correct in saying that the orders were that wherever Government pice were wanted they should be supplied from the treasury, and they were so supplied, and he believed the Collectors of districts did their best to put them into circulation; but my experience is—and Sir David Barbour I believe will back me up—that after the famine of 1874 a very real attempt was made to put them into circulation, but unfortunately they found their way back to the treasury, and ultimately an enormous amount of Government pice which had been sent there for their free use in connection with the famine relief-works found their way back to Calcutta. When I was recently in Behar I made enquiries to see whether I could do something to give a fillip to the policy of the Government by introducing Government pice in payment for labour at the relief-works which were then going on. I got an energetic officer, who promised to try to do all he could; but from what I could ascertain of the general feeling of all those whom I consulted—planters and others—I gathered that so long as the circulation of dumpy pice was not made illegal we could not get the Government pice into circulation at all. The difficulties were these, that, in the first place, small shop-keepers would not take them at all, or, if they took them, they would only do so at a large discount. Government pice were in circulation at the sadr stations, as for instance at Durbhunga, but as soon as you got ten miles out into the villages not a Government pice was to be seen; and when I look at the proposal of the Select Committee making it an offence for any person not merely on behalf of a railway administration or local authority, but even on behalf of the lessee of any tolls leviable by such administration or authority, to receive as money any piece of metal which is not coined as defined in the Indian Penal Code, it occurs to me that the difficulty with which we would have to contend in carrying out this measure would be very considerable. Until the Government pice have taken the place of these dumpy pice it is perfectly certain that a man who wishes to cross a toll-bar, for instance, would have nothing else with which to pay the toll. If the lessee of the toll refuses to take dumpy pice in payment of the toll, the man must either go back, or it becomes a question whether the lessee himself, or a bunnia in his interest, is to do the exchange and thus make the man pay more as toll than the authorised toll. I do not say that this objection is one which ought to lead to the exclusion of the section, but I am not sure that the real importance of it has been considered. The principle of the Bill I entirely approve; but I do hope it will be worked on the one hand energetically and on the other carefully, and that it will lead to more stringent legislation before many years are over."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR then said :—" The inadvertent retention in section 3 of the Bill of the words 'or issued' in the ordinary sense of those words, and not in the special sense which we have found it necessary by the interpretation-clause to assign to the word 'issue' where it occurs in other parts of the Bill, compels me at this stage to ask for the omission of those words from section 3 and to move certain further amendments which their removal suggests. The amendments are verbal and their sole object is to carry out in clearer and more unmistakeable language the intention of the members of the Select Committee.

"The amendments I have to move are the following :—

(*a*) that in section 2 of the Bill, after the word 'put' in line 1, the words 'a piece of metal' be inserted, and for the words 'any piece of metal' in line 4 the words 'such piece having been' be substituted;

(*b*) that from section 3 of the Bill the words 'or issued' be omitted;

(*c*) that in section 4, sub-section (*1*), clause (*a*), of the Bill, the words 'in contravention of the last foregoing section,' with the addition of the word 'or', be placed immediately after the word 'makes';

(*d*) that in section 4, sub-section (*1*), clause (*b*), of the Bill, the words 'issue the piece' be substituted for the words 'issue it in contravention of that section';

(*e*) that the marginal notes to sections 3 and 4 of the Bill be modified with reference to the foregoing amendments."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill, as amended, be passed. He said :—" I have only one word to say, and that is with reference to the penalty provided in the case of a person who while acting on behalf of a railway administration or local authority receives these pieces of metal as money. This provision may no doubt in some cases occasion a certain amount of inconvenience, but I do not think the inconvenience will be very great, because if these pieces are refused at a railway-station some money-changer or bunnia at the place would immediately arrange to give Government pice in exchange for them; and, though some inconvenience might be caused to travellers, it would not be of great magnitude. The justification for causing even this limited amount of inconvenience is that, unless we take some steps in this direction, we shall never get rid of these pieces of copper that now do duty as money."

The Motion was put and agreed to.

MEASURES OF LENGTH BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India.

SEA CUSTOMS ACT, 1878, AND INDIAN TARIFF ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Bill to amend the Sea Customs Act, 1878, and the Indian Tariff Act, 1882, be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Mr. Steel, the Hon'ble Mr. Halliday, the Hon'ble Sir Dinshaw Manockjee Petit, the Hon'ble Rájá Durga Charn Laha and the Mover.

The Motion was put and agreed to.

PORTS BILL.

The Hon'ble SIR DAVID BARBOUR also moved for leave to introduce a Bill to consolidate and amend the law relating to Ports and Port-charges. He said:—

"Since the Indian Ports Act of 1875 was enacted, no less than nine amending Acts have been passed, and, if it were not for the introduction of the present Bill for consolidating the existing enactments, it would have been necessary to pass a tenth. These facts are sufficient to show the necessity that exists for the consolidation of the existing law, and I need not say anything more on this point.

"With regard to the amendments of the existing law which it is now proposed to introduce, I may explain that a draft Bill has been already circulated to the maritime Governments—Madras, Bombay, Bengal and Burma—and considered by them. Of the changes which they have suggested, some have been incorporated in the present Bill, while others will be considered by the Select Committee, and a few have been left to be dealt with by local legislation.

"The changes which it is proposed to make in the existing law are set forth in the Statement of Objects and Reasons attached to the Bill, and I need only mention a few of the more important.

"The first proposal is that the provisions of sections 40 and 41 of the present Act shall apply to all ports in future without the necessity of their being spe-

cially extended to each port by the Local Government. The provisions of these sections prevent certain acts from being done in ports without the permission of the conservator. The alteration will save trouble, and it appears to be free from objection.

"The next alteration to which I desire to call attention is one affecting the liability of a master for certain acts of his servants or agents.

"Under section 22 of Act XII of 1875, the present Ports Act, any person who, by himself or another, casts ballast or rubbish or anything which is likely to impede navigation into a port is liable to fine. It has been held under this section that a contractor who had undertaken to remove ballast from a vessel and whose servants cast the ballast into the port was not liable to fine, because it could not be proved that he abetted or connived at the offence.

"To meet such a case as this it is proposed that, if a person contracts to remove ballast or rubbish and his servants cast it into the port, such person shall be liable to fine on the ground that a person who undertakes a work of this character is bound to see that his servants act in a legal and proper manner, and so as not to injuriously affect public interests and rights.

"It also appears that Port Commissioners and Trustees have in some cases made grants to sailors' homes and for other objects connected with the well-being of seamen on shore. The men for whose benefit these grants have been made are subject to great temptations when on shore, and are, for many reasons, entitled to some special consideration at the hands of the public authorities. But, as doubts have been raised whether such grants could legally have been made under the law as it stood, advantage will be taken of the present opportunity to validate all such grants that may have been made in the past, and to remove any doubts as to the legality of making them in the future.

"A provision has been inserted to provide for ascertaining the tonnage of vessels which are of such a nature that they do not admit of being measured for this purpose.

"It sometimes happens that firewood and other articles are conveyed from port to port in the Bombay Presidency on rafts of which it is impossible to ascertain the tonnage by measurement, although, for certain purposes connected with ports, it is absolutely essential that the tonnage should be known. To meet such cases it will now be provided that, where measurement is impossible

in accordance with the provisions of the law, the conservator shall have power to declare the tonnage according to such estimate as may, under the circumstances of the case, be reasonable. This seems to be the easiest and best way of getting over the difficulty.

"A provision will also be introduced into the Bill giving power to local authorities, with the previous sanction of the Local Government, to deal with any immoveable property that may be vested in them so as to make it available for use in connection with a sailors' home or other institution for the benefit of sailors. Such a provision will obviously be of use under certain circumstances and cannot be productive of evil; it is taken from the English law on the subject.

"In the case of Rangoon and Chittagong, it is provided that tugs and river-steamers shall pay port-dues once in six months. This is obviously a proper provision, and the case of these vessels is not provided for in the present law.

"The schedule of port-dues for the Madras ports is still under the consideration of the Government of that presidency, which will also have to consider whether it is necessary any longer to maintain Madras Act II of 1872; hitherto it has not been found necessary for the Government to make use of the provisions of that Act.

"An important provision in that Act which gives power to detain the master of a ship, and consequently the ship itself, for certain departmental purposes, has not been inserted in the Bill, although a provision of a somewhat similar nature has been supported by the Trustees of the Port of Bombay. The proposal of the Trustees is one which obviously cannot be adopted except after careful consideration. It would be a serious evil in the present days of keen competition to do anything which might lead to a vessel being detained except on public grounds of clear necessity. The Select Committee will no doubt give their attention to this question."

The Hon'ble Mr. STEEL said:—"I would suggest to the hon'ble mover that, by the statement he has just made, he has not supplied us with all the information which should be before us to justify legislation. He has described the Bill he proposes to introduce as designed rather to consolidate than to change the existing law, but this will not relieve the legislature from responsibility for the principles on which the Bill is founded. It will be admitted that funds raised in the form of port-dues should be devoted to the specific purpose

of providing facilities for trade, and that it would be improper to allow them to be merged in the general revenues. This principle is carefully applied in the case of the larger Indian ports whose affairs are administered by trustees, but we have no assurance that the same rule holds good with regard to the smaller ports, and it is in respect of these that I ask for information. The ports on the Madras coast are 149 in number. Of these the great majority are not ports in the ordinary sense of the word, but merely open roadsteads, marked out on the coast-line by a flagstaff on which by night a small lamp is hung. At these places of call there are no facilities provided for loading or discharging cargo, no buoys to mark the proper anchorage. No public officer comes alongside a vessel except a coolie on a catamaran. Now, for calling at one or more of a group of these ports, a steamer is charged the considerable sum of Rs. 300 to Rs. 500 according to her size. It appears to me that no commensurate service is rendered in exchange. I would remark that during the past few years the steam tonnage employed in the coasting trade has more than doubled, and presumably the revenue from port-dues has increased in similar proportion. We may, therefore, assume either that in past years the revenue has been insufficient to meet the charges, or that it must now be more than sufficient, or else that some new expenditure has been undertaken to provide facilities for trade. If the last hypothesis be the true one, the public have no information concerning it. With this explanation I suggest to my hon'ble friend that before asking for a vote on his Bill he should supply us with a statement showing the amount annually levied in the form of dues at the small ports in the Madras Presidency, and the purposes to which the funds are applied."

The Hon'ble SIR DAVID BARBOUR said:—"With reference to the remarks made by the Hon'ble Mr. Steel, I may say that I agree with him that all port-dues should be expended upon the legitimate purposes of the port, and I wish also to add that, so far as I have been able to ascertain, this is the case at present. In the Madras Presidency, and in Bombay also, a number of ports are grouped together for certain purposes; but, so far as I am aware, the money raised by the port-dues is spent upon those ports. If in any of these ports the facilities for trade are not great, I believe it is due to the fact that the income of the port is not large. But I shall be happy, at a future stage of the Bill, to give the hon'ble member all the information I possess, or which I can obtain, on the subject; and I hope he will consent to serve on the Select Committee on the Bill, when he will have a further opportunity of bringing the facts to notice."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

MADRAS CORONER'S BILL.

The Hon'ble MR. HUTCHINS moved that the Select Committee on the Bill to abolish the office of Coroner of Madras be instructed to submit their Report at the next Meeting of the Council.

The Motion was put and agreed to.

The Council adjourned to Friday, the 8th February, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 8th February, 1889.

PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.—NO. 398 L. D.—8-2-89.—316.—C. H. L.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 8th February, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble J. W. Quinton, C.S.I.

The Hon'ble R. Steel.

The Hon'ble Sir Dinshaw Manockjee Petit, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble Moung Ôn, C.I.E., A.T.M.

MERCHANDISE MARKS BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to amend the Law relating to Fraudulent Marks on Merchandise.

MADRAS CORONER'S BILL.

The Hon'ble MR. HUTCHINS presented the Report of the Select Committee on the Bill to abolish the Office of Coroner of Madras.

BURMA VILLAGE BILL.

The Hon'ble MR. HUTCHINS also presented the Report of the Select Committee on the Bill to provide for the Establishment of a Village-system and amend the Law relating to Rural Police in Lower Burma.

PORTS BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Bill to consolidate and amend the law relating to Ports and Port-charges be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Mr. Quinton,

the Hon'ble Mr. Steel, the Hon'ble Sir Dinshaw Manockjee Petit, the Hon'ble Mr. Halliday and the Mover, with instructions to report within four weeks. He said:—"When I had the honour of introducing this Bill at the last meeting of Council, the Hon'ble Mr. Steel urged that port-dues should be devoted to the specific purpose of providing facilities for trade and should not be merged in the general revenues. I said at the time that I entirely agreed with him on this point, and that to the best of my knowledge and belief port-dues actually were disposed of in the way he suggested, and not in any other way.

"It will be convenient if I now explain the provision made in the present Bill for ensuring that port-dues shall be expended in a proper manner and for proper purposes.

"Under section 35, sub-section (*1*), of the Bill the Local Government is required to appoint some officer or body of persons at every port to receive the fees and dues, and, subject to the control of the Local Government, to expend them on the objects authorised by the Bill. A list of these objects is given in sub-section (*5*) of the same section, and it seems to me that the list of objects there given is a very proper and reasonable list; but I shall be prepared to consider any suggestions which my hon'ble friend may make for its amendment. Not merely must the port-dues and fees be expended on legitimate purposes only, but the accounts both of the receipts and expenditure must, according to the provisions of the Bill, be published every year in the Gazette.

"So far I think no fault can be found with the proposed legislation, which proceeds substantially on the lines of the existing law. If there are any evils which require a remedy, such evils do not arise from any error or omission of the legislature, which seems to me to have made reasonable provision for the needs of the case, but must be due to defects in the method of administering the law. Now, the Hon'ble Mr. Steel called attention to the case of the minor ports on the Madras coast, and I understand from his remarks that he had doubts whether the port-dues raised in those ports were spent on legitimate objects. I believe I am right in saying that my hon'ble friend has no personal knowledge of the condition of those ports, or of the manner in which the port-dues are spent, and I must admit that I am in the same position, having only this advantage that I have access to the public documents and accounts connected with the port funds. But I have looked through the papers which are available in Calcutta, and I can find no evidence that the port-dues of the minor ports on the Madras coast have been spent otherwise than for legitimate purposes sanctioned by the law. There are no doubt difficulties connected with the levy of port-dues on coasting and other steamers at these minor ports, and also in connection with the distribution of the dues among the different ports

of the same group, and these difficulties have formed the subject of much discussion and correspondence; but all the evidence that I have been able to obtain shows that port-dues have never been diverted from the purposes to which they may legitimately be applied in accordance with the law.

"It is true, as my hon'ble friend remarked, that the tonnage of vessels calling at these ports has largely increased in recent years, but the group rate of port-dues was reduced in 1885 from $4\frac{1}{2}$ annas a ton to 3 annas a ton, or by 33 per cent., and I find that in recent years the total expenditure has rather exceeded the receipts than fallen short of them. The schedule of port-dues for the Madras ports is now under the consideration of the Madras Government, and, before it is finally embodied in the Bill, my hon'ble friend will have every opportunity as a member of the Select Committee on the Bill to propose any modifications or additions which he may consider necessary.

"As the draft Bill is chiefly a consolidating Bill, and as it has already been considered by the maritime Governments and their advisers, official and non-official, I think the Select Committee may reasonably be requested to report within four weeks."

The Hon'ble MR. STEEL said:—"I have heard with satisfaction from the speech of my hon'ble friend that the Government recognises the principle that port-dues should be applied to the specific purpose of providing local facilities for trade, and that the Bill now before us contains provisions which are designed to enforce that condition. The hon'ble member has promised to supply the Select Committee with full information, and in doing so he has complied with the request which I made at the last meeting of the Council. I am bound to say that the information supplied to me by parties engaged in the coasting trade is not borne out by the statement which has been made to us at present. There must be some mistake or misunderstanding somewhere, but the Select Committee will by examination of the papers supplied to them be able to elucidate the facts; and, as we have all one common object in view, I have no doubt that the recommendations of the Select Committee will command public approval."

The Hon'ble MR. HUTCHINS said:—"As the observations made by the Hon'ble Mr. Steel appear to refer chiefly to the Madras Presidency, I should like to say a few words of explanation. The hon'ble member seemed to think that some portion of the dues levied at the Madras ports was diverted to purposes unconnected with the ports. I can assure the Council that this is not so. The present law states with distinctness the purposes to which alone port funds can be appropriated, and all proposals to expend such funds must necessarily be scrutinised with regard to the definition of those purposes. There

was, however, under an old Act—passed I think about 1864—a general port fund, and, owing to some misapprehension on the part of the late Port-officer, this general fund was kept up after that enactment had been repealed. It was hardly more than a technical error, as all that was necessary to preserve the common fund under Act XII of 1875 was a notification which at that time the Government would certainly have been ready to grant. It is possible that some moneys, certainly no considerable sum, which should have gone to the credit of particular ports have in consequence of this error been diverted to other ports or stand to the credit of the general fund. The mistake was discovered about eighteen months ago, and the Government thereupon ordered the accounts for a large number of years—I think it was eight years—to be re-written on the proper legal basis. Again, it was explained by Sir David Barbour last week that the Madras ports are divided into groups for the purpose of levying fees. The fee is levied at the first port of the group touched at and clears all ports in the same group for a certain number of days. This arrangement naturally gives an advantage to the extreme ports of a group, but in the new accounts this also has been set right, and all the fees levied in a group distributed according to the tonnage entering each port. As to the very small ports referred to by the hon'ble member, these are only kept up for small native craft, and I can hardly imagine that they ever see such a thing as a steamer. Certainly no steamer would visit them which had not visited and paid fees at some larger port in the same group. The earnings of these ports are infinitesimal, but, such as they are, they are all spent on the ports themselves and on no other purpose than those enumerated in the Act. I understand the hon'ble member to be under the impression that the port of Madras may be unduly favoured at the expense of the outports. This is certainly not the case. I am not sure that the new accounts have yet been published or even finally adjusted, but I know the results brought out a much larger balance to the credit of Madras than appeared before."

The Motion was put and agreed to.

The Council adjourned to Friday, the 15th February, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 12th February, 1889.

Government of India Central Printing Office.—No. 430 L. D.—13-2-89.—316.—G. R.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 15th February, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble J. W. Quinton, C.S.I.
The Hon'ble R. Steel.
The Hon'ble Sir Dinshaw Manockjee Petit, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Durga Charn Laha, C.I.E.
The Hon'ble G. H. P. Evans.
The Hon'ble Maung Ôn, C.I.E., A.T.M.

MEASURES OF LENGTH BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India be taken into consideration. He said :—

"This Bill has undergone very little modification at the hands of the Select Committee, the most important alteration being that the date of its coming into force is left to be fixed by the Governor General in Council, in consequence of the standards, ordered from England, not having yet arrived. When received, a copy of the standard will be kept in Calcutta, and measures

certified, under the authority of the Governor General in Council or of a Local Government, to correspond to the lengths marked thereon, will as soon as possible be available for use throughout British India.

"As this Bill is confessedly ancillary to the Bill now before the Council to amend the law relating to fraudulent marks on merchandise, the Select Committee did not consider it desirable to extend its scope to measures of land. So far as it carries out the limited purpose which it is intended to serve, it has met with general acceptance."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble Mr. SCOBLE also presented the Report of the Select Committee on the Bill to amend the Indian Succession Act, 1865, the Probate and Administration Act, 1881, and the Court-fees Act, 1870, and to make provision with respect to certain other matters. He said:—

"As the matters with which this Bill deals are of a somewhat technical character, I will, with Your Excellency's permission, briefly state the effect of the amendments which have been introduced by the Select Committee.

"The primary object of the Bill is to give native executors and administrators in India the same power of dealing with a deceased person's estate as executors and administrators have in England. 'It is a general rule of law and equity,' says Sir E. Vaughan Williams, in the book which is the standard authority on the subject, 'that an executor or administrator has an absolute power of disposal over the whole personal effects of his testator or intestate;' and it is manifestly convenient that it should be so. An executor or administrator, in most cases, must sell in order to perform his duty in paying debts and other charges; and no one would deal with him if liable afterwards to have the transaction questioned.

"In India, however, it was thought desirable that the consent of the Court which granted the probate or letters of administration should be obtained before the property of the deceased could be disposed of. When introducing this Bill in August last I pointed out the illusory character of this supposed safeguard,

and that it tended rather to promote litigation than to afford effectual protection to those beneficially interested in the estate. The Judges of the High Courts at Madras, Bombay and Allahabad, and of the Chief Court of the Punjab, approve of the proposed legislation; but the Judges of the High Court at Calcutta, while willing to give the executor or administrator full power to alienate moveable property generally, consider that the law as it at present stands, so far as it relates to the disposal of immoveable property, should remain unchanged, and that 'Government promissory notes, shares in public companies, &c., which are of the nature of permanent investments' should stand on the same footing as immoveable property.

"The Select Committee were unable to accept this view. Government promissory notes are probably more easily disposed of than any other form of moveable property, and by selling them an executor or administrator can readily put himself in funds to meet the necessary expenses of his position; while it is often desirable that an executor or administrator should free the estate, without loss of time, of the liability attaching to the holding of shares in public companies, or should be able to take advantage of a favourable opportunity of realising them. As regards the disposal of immoveable property, the power of an executor is left subject to any restriction imposed on him by the will, unless he is relieved from that restriction by an order of the Court; and an administrator may not, without the previous permission of the Court, mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property vested in him or lease any such property for a term exceeding five years. It appeared to the Select Committee that these provisions give all requisite security against waste.

"But while thus leaving executors and administrators a freer hand in these respects, the Bill renders more strict the provisions of the law with regard to the filing of inventories and accounts, and materially strengthens the power of the Court to deal with neglect or failure to furnish them, and to punish fraud or falsehood in regard to them. Other sections provide that, when a grant of probate or letters of administration is revoked or annulled, the probate or letters shall at once be delivered up to the Court which made the grant, so as to prevent any improper use being made of them thereafter.

"In introducing the Bill I referred to the doubt which existed as to the stamp to which an administration-bond is liable. That doubt has since been converted into a certainty by a decision of the High Court at Allahabad, which has held that such instruments must, as the law stands, be stamped under the

Stamp Act and also under the Court-fees Act. This is obviously unfair, and the Select Committee recommends that in future they shall be chargeable with duty under the Stamp Act only.

"There is one other matter in the amended Bill to which I think it necessary to draw attention. It was brought to my notice by the Administrator General of Madras that section 283 of the Succession Act, which provides that, 'if the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled,' was not only bad law, but very burdensome when applied to the small estates left by Europeans who may die in this country, the whole or great part of the assets being exhausted in the enquiry as to domicile rendered necessary by this section. The rule is based on a decision of Sir John Romilly, when Master of the Rolls in 1854, which has not been followed by later authorities. In the recent case of *In re Klœbe* (L. R. 28 Ch. D. 175) Mr. Justice Pearson expressly dissented from it, and quoted with approval as the true rule, that laid down by Mr. Westlake in his work on Private International Law:—'Every administrator must apply the assets reduced into possession under his grant in paying all the debts of the deceased, whether contracted in the jurisdiction from which the grant issued or out of it, and whether owing to creditors domiciled or resident in that jurisdiction or out of it, in that order of priority which, according to the nature of the debts or of the assets, is prescribed by the laws of the jurisdiction from which the grant issued.' In other words, Indian assets must be distributed according to the law of India. This is the rule of common sense, and the Select Committee has adopted it in section 9 of the amended Bill."

SUCCESSION CERTIFICATE BILL.

The Hon'ble SIR DAVID BARBOUR presented the Report of the Select Committee on the Bill to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons.

LOWER BURMA COURTS BILL.

The Hon'ble MR. SCOBLE moved that the Hon'ble Mr. Hutchins, the Hon'ble Mr. Quinton and the Hon'ble Maung Ôn be added to the Select Com-

mittee on the Bill to consolidate and amend the law relating to Courts in Lower Burma. He said:—

"Under ordinary circumstances I should make this Motion as a matter of routine; but, the circumstances being special, I think it desirable to explain to the Council the course which, with Your Excellency's permission, I propose to take in regard to this Bill.

"It was introduced by me on the 11th of February, 1887, and referred to a Select Committee consisting of the Hon'ble Messrs. Peile and Whiteside and myself on the 24th of the same month. That Committee never met, and I am the only member of it now remaining in Council. The Bill can therefore be taken in hand by the Committee which I now propose, unfettered by any action on the part of their predecessors.

"The enquiries which have been made during the period which has elapsed since the introduction of the Bill have satisfied me that in its present shape it is not adapted to the requirements of Lower Burma and that the establishment of a Chief Court in that province would be premature. The litigation is not sufficient in volume or in importance to call for such a tribunal; and it will be early enough to consider its necessity when the judicial organization of Upper and Lower Burma has been placed on the same footing, and there is sufficient business to occupy the time of a Court of four Judges. Meanwhile the existing establishment appears to be more than ample, and, with certain improvements of distribution and procedure, quite competent to carry on the administration of civil and criminal justice to the satisfaction of the public.

"The proposals which I shall submit to the Committee have the approval of the Chief Commissioner of Burma and of other officers of experience in that province. They are also, I think, in accordance with what I found to be the prevailing opinion in Rangoon, the town which is principally affected by them. If accepted by the Select Committee, they will involve a considerable departure from the lines of the Bill as originally introduced, and a return to those of the Act of 1875, with such modifications and additions as the experience of fourteen years' working has been able to suggest. In framing these proposals I have been guided by a desire to make the administration of justice simple and efficient, by remedying ascertained defects rather than by establishing a new system in excess of existing requirements, and thus entailing upon the province great expense without corresponding advantage. I hope soon to be able to lay the amended Bill before the Council, so that it may be published and submitted to general criticism without delay."

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES AND OUDH KANUNGOS AND PATWARIS BILL.

The Hon'ble MR. QUINTON moved for leave to introduce a Bill to authorise the imposition of a patwari-rate in the North-Western Provinces and Oudh, and make certain provisions respecting kanungos and patwaris in those Provinces. He said :—

"My hon'ble friend the Finance Member will doubtless, when the proper occasion arrives, explain to the Council with greater fulness than I could do, and with an authority which I cannot claim, the reasons which have forced the Government of India, notwithstanding the recent revision of the imperial and local finances by the Finance Commission, to call on the Local Governments either to contribute next year from the balances which are now to their credit on the basis of the contracts made only two years ago, or in some other adequate form to give assistance to the imperial treasury. I shall confine myself today to the task of showing the mode in which the North-Western Provinces and Oudh Government proposes to meet this demand, and to ask for sanction to the legislation necessary to give effect to those proposals.

"It will be in the recollection of hon'ble members that in 1882 the Government of India found itself in a position to remit three millions of taxation. In considering the interests and classes to which relief might be afforded the Government of India came to the conclusion that a reduction of taxation was called for in the North-Western Provinces and Oudh. Major Baring, the then Finance Member, stated that a careful examination of the economic condition of the people of the various provinces of India showed that there were but slight signs of improvement in the mass of the people in the North-Western Provinces and Oudh during the preceding ten years, and proceeded to fortify his views by an examination of license-tax statistics. Relief was accordingly given to the North-Western Provinces and Oudh in the form recommended by Sir George Couper, the Lieutenant-Governor at that time. The patwari-rate in the North-Western Provinces was remitted, and the charges for the payment of kanungos and patwaris there, as well as in Oudh, were thrown upon provincial funds. The financial effect of this was to render the Government liable for a charge of over 30 lakhs of rupees which had hitherto been borne by the landlords and, in many cases, by the tenants of the united provinces.

"The Government of India acted to the best of their judgment on the information then before them and on the advice of the Local Governments,

though some exception was taken in the debate on the Bill to give effect to the proposals by Sir Charles Crosthwaite, a very high authority on all revenue questions. He objected to the form in which relief was afforded, on the ground that it was unlikely to reach the persons for whose benefit it was intended, namely, the cultivators and actual occupants of the soil. Objection might have been equally taken on other grounds, such as that the payment was for service directly rendered to landlords or tenants, and was therefore not one with which the Government was called on to burden the general tax-payer. The measure in point of fact, mainly for those reasons, has never gained approval in the Upper Provinces. The proposal, however, became law, and since 1882 landlords in the North-Western Provinces and Oudh have had to incur no charge on account of patwaris. The form which was assumed by this relief must have been to them a matter of surprise, for, as I have just said, the charges to which they were liable on account of patwaris was in no sense a tax for the benefit of the public exchequer, but a payment for services rendered. Nor was the burden one recently imposed. In the year 1793, Regulation VIII required every proprietor of land, who had not already done so, to establish a patwari in each village of his estate to keep the accounts of the raiyats. These provisions were extended to the province of Benares by Regulation XXVII of 1795, and in 1803 to the ceded provinces. Regulation XII of 1817 superseded these enactments, but renewed the obligation and laid down more explicit directions respecting the appointment and duties of the patwari and the liability for his remuneration. This law remained in force in the North-Western Provinces until 1873; and so long ago as 1855 the zamindárs at the North-Western Provinces settlements engaged to pay a cess of 3 per cent. on the rental of their estates, for the remuneration of patwaris, which was paid up to 1882. In Oudh, where Regulation XII of 1817 was in force till 1876, the liability of landlords for the payment of patwaris was enforced up to the same time as in the North-Western Provinces. The Land Acts for the North-Western Provinces of 1873, and for Oudh of 1876, made no change in this liability.

"In 1884 an enquiry was made by Sir Alfred Lyall as to the extent to which the relief from payment for patwaris had reached the tenants for whose benefit it was intended, and it was ascertained that, except in the permanently-settled districts and in a few isolated cases in other districts, the contributions to the patwari-cess formerly paid by tenants had long previously been amalgamated with the rent under the Settlement Rules of 1855 or Land-revenue Act of 1873, and that it was impossible to resolve rents then existing into their

component parts, so as to be able to say what portion of the rent was to be remitted on account of the abolished cess. This clearly showed that in the North-Western Provinces the relief given to the tenants by the legislation of 1882 was but partial, and the present Lieutenant-Governor is of opinion that very much the same may be said in regard to Oudh. The remission of the patwari-cess proved a benefit to the landlords and taluqdárs of the North-Western Provinces and Oudh, whose position has been one of increasing prosperity owing to the excellent seasons the country has enjoyed during the last five years and the great stimulus to the export trade in food-grains; but it is very difficult to maintain, because it is almost impossible to furnish proof that in any material degree it reached the tenants for whose advantage it was designed. The matter may be summed up by saying that the concession, which was in itself, to put it in its mildest form, questionable, not only cannot be shown to have benefited those for whose relief it was intended but is known in many cases to have failed to do so.

"From an administrative point of view the change made is also open to serious objection. In the North-Western Provinces, since 1873, the proceeds of the patwari-cess constituted a fund appropriated to certain specific objects, which carried forward its balances from year to year and was unaffected by the fluctuations in the annual provincial budgets. It expanded with the growth of the land-revenue and afforded a stable basis for improvement in the kanungo and patwari establishments throughout the provinces. The importance of the efficiency of these establishments both to the rural community and the general tax-payers is well set out in an extract of a letter from Mr. Benett, then Director of Agriculture and Commerce, now Officiating Chief Secretary to Government, North-Western Provinces, addressed to the Board of Revenue in 1883:—

'Whatever his faults may be, the patwari is now the mainstay of order in the rural community, and the chief protection which the tenant has against illegal exactions. If we once destroy his efficiency as a village-accountant, we shall deliver more than two-thirds of the population of these provinces into a condition very nearly resembling anarchy. The second consequence would be that we should lose the safe and simple guide of the rents which are actually paid in assessing the land-revenue. The subject is too complicated to enter into minutely; but it may safely be said that for Government to be driven to wholly theoretical calculations in determining the amount to which it is entitled from the land would be an evil of the first magnitude both to itself and to the people; and that, if the guide furnished by rent were ever lost, it would eventually be compelled, after ineffectual and disastrous efforts to escape the result, to sacrifice all further share in a continually increasing source of revenue.

'The second part of his work, that is, the maintenance of correct maps and record-of-rights, is in fact hardly less indispensable. The only alternative to his doing it is that it should be done periodically by Government. It is not necessary only in temporarily-settled tracts for the purposes of the revision of the revenue; but, as is shown by the surveys now in progress, it is equally unavoidable in the permanently-settled districts. The advantages of getting it done by the regular patwari staff are simply incalculable. In the first place, it avoids the periodical intrusion of a host of amins and the unhinging of all current relations which are bad enough evils in permanently-settled districts, but which are infinitely aggravated in temporarily-settled districts by the fear of a revision of the revenue which checks cultivation and promotes the wholesale bribery of every subordinate who is supposed to be able to affect the result. In the second place, it maintains the record at a uniform pitch of correctness, whereas the renewals of it formerly in use could only occur at the oftenest once in thirty years, and in the meantime the record kept on growing more and more inaccurate till, when the time for renewal came round, it had become to all intents useless, and every succeeding stage of deterioration meant more litigation for the people and increased difficulty to the revenue-administration. The third advantage is perhaps the most obvious; but, great though it unquestionably is, it may perhaps be doubted whether it is as great as the two already mentioned—that is, the saving of expense. If the patwaris maintain the maps and record-of-rights, the whole of the cost of their preparation at a new settlement is saved.

'The cost of making a regular revision of the record-of-rights and survey is extremely high. The late settlement of the temporarily-settled districts cost more than one-and-a-half million sterling, and is good for only thirty years. If capitalized at 4 per cent. compound interest for that period, it represents a charge to the State of more than four millions sterling. The survey of the permanently-settled districts has cost, I believe, about R170 to the square mile—a rate which, if applied to the whole province, would amount to nearly one-and-a-half million sterling. This is the cost of a survey where there is no revision of revenue, and it must recur periodically unless the papers are systematically kept up by the regular staff. The whole of this enormous expense is avoided if the maps and records are maintained by the patwaris, and not only does the work then cost Government absolutely nothing, but, as has been already shown, it is done in a way which makes it answer its purpose much better.'

"Subsequent enquiries have shewn that the actual cost of the late revisions of settlement was greater than what had been estimated by the Director of Agriculture five years ago, and that the capital charge of a revision on the former method for both permanently and temporarily-settled districts combined would be at least two and a half millions sterling.

"The Government of India and the Secretary of State have now fully adopted the policy of basing temporary settlements on the actual rentals of the

estates for the ascertainment of which the correctness of the patwaris' records is essential; and in the Meerut Division, where this policy is for the first time being put into practice, the cost has already been reduced to less than a quarter of what it would have been under the old system, while the duration of the proceedings has been shortened in almost the same proportion. There is, moreover, reason to expect that half of even the present low average charge might be avoided if Government were in a position to make the patwari staff (which must in any case be maintained for the ordinary purposes of administration) fully efficient. Another and most important consideration is that in Oudh this Council in 1886 conferred upon the tenants of that province statutory tenures for the maintenance or accrual of which the same records form the chief evidence. The efficiency in these establishments, so all important from different points of view, is now endangered by the change made in 1882. In the North-Western Provinces it is calculated that to bring the pay of every patwari up to R7—the minimum required, in the opinion of those best able to judge, to secure a competent man—would require nearly $1\frac{1}{2}$ lakhs of rupees; and the cost of these establishments must obviously increase *pari passu* with the spread of cultivation, and the sub-division of estates, of fields and of cultivating tenures which accompanies increased cultivation. Had the fund as formerly constituted continued in existence, these demands would have been gradually and fully met by the natural increase of the assets of the fund, but the substitution for the fund of an annual grant from provincial revenues has effectually precluded all hope of improvement. The state of the provincial finances will not admit of progressive expenditure on the pay of patwaris or other not less important objects connected with this branch of the administration; and, especially in view of the dangers which continue to overhang the finances of the Empire for some time to come, the strictest economy will be necessary in order to enable the Local Government to ensure to itself financial equilibrium.

"In Oudh it was supposed that the Act of 1882 would tend to greater efficiency in the patwaris by enabling Government to exercise a much stricter control than was admitted by the then existing law over their appointment and their conduct in the discharge of their duties. But it was found inexpedient abruptly to break the ties which at that time bound the patwari to the taluqdár, and objections, to which the Local Government felt bound to yield, have resulted in the patwari, while he is paid by Government, being less directly under Government control than was contemplated when the Act was passed.

"The following passage from a minute of Sir Auckland Colvin on the

subject illustrates the point of view from which I am asking the Council to consider it :—

'In view of the fact that one of the first decisions to which I have been compelled to come has involved negativing any improvement to the material position of the patwari, though knowing the important part which he plays in the fiscal machinery of the Government and in the economic life of the landlord and tenant, it seems to me a lesser evil that a class of men to whom the relief from taxation has come by a side door should suffer than that an important body of public servants should be left without prospect of relief in a state of organization which is very prejudicial to the interest of the Government, of the tenants and of the landlords themselves.'

"Fiscally, economically and administratively, therefore, the measure of 1882 has resulted in disappointment.

"We now propose in the Bill to retrace our steps to a certain extent, and in the North-Western Provinces to re-establish the patwari-rate, but at a rate of 4 instead of 6 per cent. on the revenue. In Oudh no cess was ever paid, but the landlords, or in some cases the under-proprietors, were liable for the pay of the patwari. This had great disadvantages, as it prevented the organisation of the patwari establishments on a uniform system or the attainment of anything like a uniform standard of efficiency. It has therefore been determined to arrange for the levy of a patwari-rate on the same principle as in the North-Western Provinces. This is in Oudh a novel measure, but the taluqdárs of the province have been carefully consulted respecting it, and with their usual public spirit and fair treatment of questions concerning land-revenue administration have given their adhesion to it. The rate to be imposed in Oudh is put at R3 instead of R4 per cent., which the Local Government consider will be sufficient from the point of view of their finances; and, as the rate is being introduced for the first time, the Lieutenant-Governor sees no reason for going beyond what is strictly necessary to secure an adequate sum for the remuneration of patwaris. Tenants benefit equally with landlords, if not to a still greater extent, from the efficiency of the patwari establishments; and in Oudh, as I have already pointed out, whatever may have been the case up to 1886, the Rent Act passed in that year has given tenants a substantial interest in the accuracy of the village-records. It is considered therefore not unreasonable that tenants also should contribute to the cost of the maintenance of the establishments required to secure that object; and the Bill proposes to allow landlords to collect with the rent a cess which, allowing for difficulties of collection and unrealizable balances, should yield about half the sum which they are called on to pay as a rate to Government. This will

regulate the liability of the tenant and exempt him from indefinite exactions to which there are reasons for thinking he may, under the old system, have been subjected.

"These rates will not, however, suffice to meet the necessary charges, and Government, representing the general tax-payer, is fairly liable to take its share in the burden. For the reasons which I have attempted to explain Government has an equal interest with the tenant and the landlord in maintaining the correctness of the patwaris' records, and would not be justified in throwing on those classes the whole of the cost necessary for the purpose. The Bill therefore proposes that the contributions from the cess should be supplemented by a grant from the public funds.

"The assets thus made up will be formed for each province into a fund applicable only to specific objects, and with the revision of settlements the amount available will progressively increase. This will secure that independence of the annual variations of the Provincial Budget, and that elasticity of income so essential to the growing demands of the land-revenue administration, and will at once enable the Local Government without crippling its establishments to furnish the assistance required from it by the Government of India."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also introduced the Bill.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 22nd February, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 15th February, 1889.

Government of India Central Printing Office.—No. 458 L. D.—19-2-89.—316.—C. H. L.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 22nd February, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble R. Steel.

The Hon'ble Sir Dinshaw Manockjee Petit, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble G. H. P. Evans.

The Hon'ble Maung Ôn, C.I.E., A.T.M.

The Hon'ble J. W. Quinton, C.S.I.

LOWER BURMA VILLAGE BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to provide for the establishment of a village-system and amend the law relating to Rural Police in Lower Burma be taken into consideration. He said:—" The main object of this measure is to define, and where it has been suffered to fall into abeyance to restore, the village-organization which in Lower, as in Upper, Burma we found in existence when we annexed the country. For Upper Burma, a Regulation, No. XIV, was passed in 1887, and after more than a year's trial it is reported to have worked exceedingly well. The greater part of this Bill merely re-enacts the provisions of that Regulation and extends them to Lower Burma. The social conditions of the two divisions of the pro-

vince are very similar, and it seems desirable that the law and the practice throughout the province should be made as uniform as possible. Some of the chief sections of this Bill are not new even to Lower Burma but are already contained, substantially if not in precisely the same terms, in the Rural Police Act, II of 1880. In the Select Committee we had the very great advantage of being assisted by a gentleman from Lower Burma, the Hon'ble Maung Ôn, a native of the province and intimately acquainted with its needs and condition. I am glad to say that he not only sees no objection to any of the provisions of this Bill but is satisfied that its effect will be very salutary. In these circumstances I think I may content myself with explaining to the Council as briefly as possible the nature of the enactment which I ask them to take into consideration.

"It consists of two parts. The first section relates to the title, extent and commencement of the Bill, and of course comes into force at once. Sections 2 to 13 presuppose the existence of a recognised and legally constituted village-headman: they will therefore only be applied to any particular area when the Local Government is satisfied that such officers have been duly appointed throughout such area. Sections 14 to 23 are of general application and will have immediate operation.

"Of these, 14 to 17 merely reproduce and apply to the lower division of the province corresponding provisions of the Regulation of 1887—

(14) regarding the imposition of fines on villages accessory to crime, or (15) in which homicide has been attempted or committed,

(16) empowering a Deputy Commissioner to remove from any village a person believed to be aiding and abetting dacoits, and

(17) regarding the recovery of fines.

"Section 14, as to the responsibility of villages, substantially corresponds with section 21 of Act II of 1880, which, as I have already stated, applies to the lower division of the province.

"Section 18 prohibits the assignment or attachment for debt of any emoluments attached to village-offices and enables the Deputy Commissioner, on the occurrence of any lapse, effectually to transfer such emoluments to the new incumbent. This is a provision in force throughout British India, and its necessity needs no demonstration. Section 19 gives the usual protection to a village-headman or constable against improper prosecution for acts done in the execution of his duty. Section 20 vests in the district-officer power to

revise orders passed by heads of villages. Section 21 simply authorizes the Local Government to confer on Assistant Commissioners powers which the Bill vests in all Deputy Commissioners. So much for that part of the Bill which is not dependent on there being a duly constituted village-headman. I will now go back to the first part of the Bill.

"Section 2 defines a village, and section 3 requires the Deputy Commissioner to appoint a headman for each village and indicates how the selection should be made. Section 4 is merely formal. Section 5, requiring the headman to report certain matters, makes some trifling additions to section 45 of the Code of Criminal Procedure; the most important, so far as I can see, being that by incorporating into that section the new definition of 'village' an obligation will be cast on the headman to report any of the specified offences which may be committed on a creek or river flowing alongside his village—a most necessary provision in such a country as Burma.

"Section 6 may be described as the headman's catechism. It gives a categorical list of the duties of a headman and will enable a newly appointed functionary clearly to understand what he has undertaken to do. I find nothing unusual here: they are all duties which by law or in practice devolve on heads of villages in more settled provinces, and many of them exist in Lower Burma already under Act II of 1880. Section 7 confers petty criminal jurisdiction on the village-headmen, such as they exercise already in Madras and Bombay. It is true that sub-section (*4*) authorises the Chief Commissioner to extend the powers of selected headmen, but under the Code of Criminal Procedure he could go further and confer on such functionaries, as indeed upon any person, all or any of the powers of a Magistrate. Section 10 similarly authorizes the Local Government to confer on selected headmen a petty civil jurisdiction, but such jurisdiction does not extend beyond that which the law has conferred on every head of a Madras village *ex officio*. Section 8 renders a headman or village-policeman amenable to punishment for any abuse of his authority, while section 9 enables him to call on any persons residing in the village to give him their assistance in case of need. This he can do already under Act II of 1880.

"Sections 11 and 12 merely reproduce and apply to Lower Burma the provisions of the Upper Burma Village Regulation already mentioned requiring strangers to report their arrival to the headman and obtain his permission before acquiring or erecting a permanent residence.

"It seems to me that none of these provisions are open to objection. The necessity of strengthening the hands of the district-officers in Lower

Burma was pointed out by Sir Charles Aitchison when he introduced the Bill, and nothing will do this more effectually or in a way more consonant to the ideas and traditions of the people at large than the enforcement of village responsibility."

"The Hon'ble MAUNG ÔN said :—" For the past few years Burma has been very much in want of a proper Village-system Act to facilitate in quieting down of the rural parts of the country, and to lighten the heavy work of the township-officers, such as Myo-ôks and Extra Assistant Commissioners.

"The present Bill sufficiently provides for the former object by insisting on strangers to report their arrival, name, the last place they resided and the date of their departure (which I have no doubt will prevent the coming in of lawless and vicious characters), and again to force the headmen as well as the inhabitants to report to the nearest police-station or to the nearest Magistrate if any member of the village gives maintenance and help to evil disposed persons, &c.

"With regard to the latter object this Bill will enable the villagers to bring their suits (the value of the subject-matter is too small to occupy their time in going to proper Courts) to the headmen. This will not only benefit the inhabitants of villages but it will greatly relieve the township-officers from their burden. In the last few years the township-officers, who have to look after the revenue as well as civil and criminal matters, have scarcely any time to attend to petty cases.

"As the existing Burma District Cesses and Rural Police Act of 1880 does not force the headmen to assist the officers of different departments, I have known several officers of the supplementary survey who could not get any assistance from either the headmen or inhabitants when such is required. But the present Bill fully provides that the headman of the village is bound to assist all the officers of the Government.

"And, for the above stated reasons and objects, I think this Village-system Bill should be passed with as little delay as possible."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES AND OUDH KANUNGOS AND PATWARIS BILL.

The Hon'ble MR. QUINTON moved that the Bill to authorise the imposition of a patwari-rate in the North-Western Provinces and Oudh and make certain provisions respecting kanungos and patwaris in those Provinces be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Sir Charles Elliott, the Hon'ble Mr. Hutchins, the Hon'ble Sir David Barbour, the Hon'ble Mr. Halliday, the Hon'ble Muhammad Ali Khan and the Mover, with instructions to report within three weeks.

The Hon'ble MR. EVANS said :—"The facts laid before the Council on the last occasion by the hon'ble mover amply justify the re-imposition of this particular tax, but I think it must have occurred to every one that those facts show an exceedingly unsatisfactory state of things in the past as regards the remission of the tax. It would appear that the Government of India at that time found itself in the position of having a surplus and decided to get rid of it by remitting taxation. I presume that they, in making this remission, must have consulted the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh, but I cannot find that they consulted the revenue-authorities or the revenue-officers of those provinces. The result of the consultation was that the Government of India determined to take upon the imperial revenues the provision of patwaris for the North-Western Provinces and Oudh. It appears also that these patwaris had for about a century been supported by the zamindárs and the raiyats in some form or other, and that the great object to be gained by the remission of the tax was supposed to be, first, the relief of the raiyats, and, secondly, a principle which was considered more important, to get the patwaris of Oudh into the power of the Government by making them Government servants, divorced from all interests either in respect of the raiyats or the zamindárs. It also appears that when this was attempted to be put into practice the remission had no corresponding beneficial effect on the raiyat. It was also found that the patwari-cess paid by the raiyats in the North-Western Provinces had been amalgamated with the rent. Under these circumstances very little or no benefit has been derived by the raiyats from this remission. As to the other object of making the patwaris servants of the Government, it appears that this was an absolutely impossible thing to do. The result was that the imperial revenues were burdened to the extent of some thirty lakhs of rupees annually without appar-

ently any benefit to anybody and in pursuance of a chimerical idea. If that was all, it would be simple enough to retrace our steps and re-impose taxation, and there would be an end of it. But it is not found possible to re-impose the tax in its entirety, but only partially, because it is very difficult to re-introduce the state of things existing before; and it is to be regretted that now in re-imposing the tax the imperial revenues will still be burdened to a great extent. It will also, to a certain extent, inflict injustice upon the raiyats who are contributing towards the old cess, which has been incorporated in their rents. The Select Committee will have to consider how these difficulties can be met. I think it desirable that attention should be drawn to the grave error which has been committed by this hasty and ill-considered remission, in order that, if possible, some steps may be taken to frame rules by which sacrifices of revenue should not be made hastily and without due time for deliberation. That no proper enquiries were made and no reasonable time for enquiries allowed in this case is abundantly clear from what took place in 1882 and it should be noted as a warning for the future."

The Hon'ble MR. STEEL said :—"When introducing this Bill the hon'ble member in charge prepared the way for his proposals by explaining the nature and the history of the patwari-cess as it existed prior to the year 1882. He showed that the cess was not a tax, but was in fact purely a rent-charge. The zamindárs held their interest in State property on the distinct and well-understood condition that they paid the cost of keeping correct village-accounts. In the year 1882 the cess was abolished, without any attempt to secure for the raiyats the benefit of the remission, although that was the object Government had in view. It thus appears that a class which had no special claim to indulgence was unwittingly presented with thirty lakhs annually at the cost of the revenue.

"My Lord, I must say that the hon'ble member's speech has exposed one of the most lamentable blunders ever made public. He was guarded in his censure, but it is evident from his language that the mistake was only possible because those who were conversant with land-revenue matters were never consulted. There must have been scores of experienced revenue-officers whose advice, if obtained, would have kept Government right. My hon'ble friend himself could certainly have given in 1882 as clear an account of the history and incidence of the cess as he did last week. Again, if the public had been consulted, I do not hesitate to say that the blunder would have been impossible. The opportunity would have been taken to remind Government of really press-

ing claims for remission of objectionable taxation. The abolition of the rice-tax, promised for so many years, would again have been urged upon Government. Those who protest against the exaction of revenue from the administration of civil justice would have made themselves heard. When confronted with legitimate claimants this impostor must necessarily have been detected.

"But I should not have considered it my duty to express lamentations over the past if I did not desire to emphasize the moral for guidance in the future. A demand has been made by the public, supported by unanswerable arguments, that the Council's Act should be so modified as to permit of discussion on projects for remitting taxation. The history of the patwari-cess affords an admirable illustration of the need for this reform.

"When a tax is imposed rapidity of action is commonly essential, in order to prevent individuals from profiting at the expense of the revenue, but the law requires that the proposal should be submitted for discussion in your Lordship's Council. But when it is designed to remit taxation there is no such occasion for haste. Deliberation is specially desirable, since a step once made is with greater difficulty retraced, and yet by law Government is precluded from affording an opportunity for discussion.

"With respect to the measure now before us I must say that the hon'ble member's speech did not support his conclusion. He shewed that the cess should never have been abolished, and the logical conclusion would appear to be that it should now be restored in its integrity. Instead of this he proposes to reduce the demand by one-third. During the past seven years the zamindárs have been unintentionally presented with two crores of rupees, and I see no reason why the cess should not now be levied on the same scale as before 1882. I do not know why the North-West Government should contribute ten lakhs from provincial funds. If the money can be spared I would much prefer that the Hon'ble Finance Minister should sweep it into his capacious bag. Again, there seems no sufficient reason why the Oudh tenants, who in 1882 were supposed to be entitled to relief, but who never obtained it, should now be called upon to contribute to relieve their landlords from a just claim.

"If those proposals are put forward by way of compromise suggested by the zamindárs, I cannot approve them.

"I am well aware, my Lord, that I have no constitutional right to propose any amendment to the Bill which would have the effect of increasing a money

demand upon any class; but I feel justified in expressing the opinion that Government should re-consider the subject before proceeding with the Bill."

The Hon'ble MR. QUINTON said :—" I should like to say one or two words in reply to what has fallen from hon'ble members to remove what I think are partial misconceptions. I should be very sorry if any inference could justly be drawn from what I said when I introduced the Bill as to the Government having acted without consulting properly qualified authorities at the time of granting a remission of this taxation. The Government of India referred to the then Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, whose territories were to be affected by the proposed legislation. Sir George Couper, who was at that time Lieutenant-Governor and Chief Commissioner, I am bound to suppose, was guided in making his recommendation in a matter of such importance by the opinions of officers who he considered were the best able to give useful advice, and I certainly never meant to convey any impression to the contrary; therefore, so far as my speech is concerned, I strongly disclaim the construction which has been inferentially put upon it by my hon'ble friend.

"Then, as regards what the Hon'ble Mr. Steel has said as to the injustice of throwing one-third of the total charge on account of these establishments upon the imperial funds, I may not have enlarged upon that point so much as I might have done when introducing this Bill. I did attempt to show that the maintenance and the efficiency of the patwari establishments on an adequate scale produced great savings in the costs of the settlements which are now going on, and may be expected to produce still greater savings in the settlements which will come on in the North-Western Provinces and Oudh within the next ten years. The principles of assessment which have been adopted with the sanction of the Government of India and the Secretary of State to be effectually carried out depend altogether on the efficiency of these establishments and the correctness of these records; and therefore it seems to me that the public, who get the benefit of these enormous savings and who would otherwise have to pay the full charge, may reasonably be asked to contribute in some degree for the maintenance of the establishments by which the savings are effected. I may also add that now-a-days much more is required from the patwari than formerly; that he supplies for the information of the Local Government, the Government of India, the Secretary of State and of Parliament statistics in regard to numerous agricultural matters; and that without the patwari those statistics must be procured by means of a paid agency; and unless the statistics are correct

they are likely to be more mischievous than useful. On this ground also I think the Government may fairly be called upon to bear a portion of the charge on account of these establishments.

"Finally, as regards the Oudh tenants, who have been alluded to by the Hon'ble Mr. Steel, he has overlooked the fact that up to 1886 the landholders in Oudh had absolutely unrestricted power of enhancing rents, and therefore whatever was put upon the landholders by way of a cess or charge ultimately came out of the pockets of the tenants, either in the shape of enhanced rent or as a direct charge. But in 1886 this Council passed an Act which conferred very valuable statutory rights upon the Oudh tenants. It checked this power of enhancement on the part of the landlord, and rendered the tenant liable to enhancement of rent only under certain well-defined rules. Therefore it would be impossible for the landlord in the present case to recover from his tenants the sums which they paid under the former procedure. And it must be borne in mind that in consequence of this legislation in 1886 the correctness of the patwari papers has become a matter of infinite importance to the Oudh tenants. The existence of the statutory tenures conferred upon them by that Act can only be proved by these village-papers, and if the patwaris are to be altogether the servants of the landlords, and if their salaries are to be paid only by the landlords, the danger is that the evidence afforded by these papers will in many cases either totally disappear or be manipulated in the interests of one party, namely, the landlord. Under these circumstances I think it is by no means unreasonable to ask the tenants to contribute towards the cost of patwaris a sum which after all is exceedingly small, namely, twelve annas in the hundred rupees in Oudh, and in the North-Western Provinces one rupee and a small fraction of the same amount. So far I think the objections which have been taken by my hon'ble friends can be fairly met."

The Motion was put and agreed to.

LOWER BURMA COURTS BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Courts in Lower Burma. He said:—"With your Excellency's permission I will briefly state the principal alterations which have been made by the Select Committee in the Bill as originally introduced.

"For reasons which will presently appear the Select Committee were of opinion that it is not desirable at present to establish a Chief Court in Lower Burma, and that by a revision of existing arrangements it will be possible to provide efficiently for the administration of justice in that province. The Bill, therefore, is one of consolidation and amendment rather than re-construction; and its bulk is to be accounted for by the fact that it contains the substance of four existing Acts of this Council.

"Outside the Towns of Rangoon and Maulmain there will be five grades of Civil Courts, namely:—

(*a*) the Court of the Myo-ôk;

(*b*) the Courts of the Extra Assistant Commissioner and the Assistant Commissioner;

(*c*) the Court of the Deputy Commissioner;

(*d*) the Court of the Commissioner; and

(*e*) the Court of the Judicial Commissioner.

"With regard to these Courts the Bill empowers the Local Government to confer Small Cause Court jurisdiction upon Myo-ôks to the extent of one hundred rupees, and on Extra Assistant and Assistant Commissioners to the extent of five hundred rupees.

"The Town of Maulmain has a Judge of its own, who exercises original civil jurisdiction within its local limits and has also the powers of a Judge of a Small Cause Court. To relieve this officer and enable him to discharge other duties which we propose to cast upon him, the Bill enables the Local Government to confer upon any Extra Assistant Commissioner or Assistant Commissioner at Maulmain the jurisdiction of an Additional Judge of a Court of Small Causes, and upon the chief ministerial officer of the Court of the Judge of the Town of Maulmain all or any of the powers conferred or conferable by or under the Provincial Small Cause Courts Act, 1887, upon the Registrar of a Court of Small Causes. As this Judge in 1887 disposed of 202 original suits, of which 106 were contested, and of 2,683 small causes, of which 996 were contested, besides criminal business, he seems well entitled to the relief which these provisions are calculated to afford him.

"In Rangoon, besides a Small Cause Court composed of two Judges, there have been for some years a Recorder and an Additional Recorder, to whom the disposal of civil business has been entrusted. In 1887 these two Judges

disposed of 265 original suits; and the small causes under R1,000 in value were dealt with by the two Judges of the Small Cause Court. It appeared to the Committee that if the jurisdiction of the Small Cause Court were extended to suits of R2,000 in value—an extension which may be made without overburdening that tribunal—one Recorder would ordinarily be able to dispose of the residue of the civil business in the Recorder's Court, and they have provided accordingly in the Bill. To give additional relief to the Recorder, as it appears that much of his time is now occupied in the disposal of formal business which ought to be, and in a Presidency High Court would be, disposed of by a Registrar or other ministerial officer, section 56 of the Bill provides that any non-judicial or quasi-judicial act which is required by the Code of Civil Procedure to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code, may in the Court of the Recorder be done by the Registrar of the Court or by such other officer of the Court as the Recorder may direct.

"It may be conceivable however that, even with these alleviations, the growth of business in Rangoon may be so great as to necessitate the appointment of an Additional Recorder; and power is therefore reserved, under section 60, to the Governor General in Council to appoint such an officer should occasion require.

"So much as regards original civil jurisdiction. As regards the trial of criminal offences, we have made but few alterations in the existing law. The criminal business both in Rangoon and Maulmain is not heavy; in 1887 there were 47 sessions cases in Rangoon and 22 in Maulmain. But the annexation of Upper Burma has rendered it necessary to provide for the trial of European British subjects and persons jointly charged with European British subjects throughout the province, and the Bill accordingly declares the Court of the Recorder to be the High Court for the whole of Burma, inclusive of Upper Burma and the Shan States, in reference to such proceedings; sentences of death passed by the Court of the Recorder as such High Court being subject to confirmation by the High Court in Calcutta. The Bill also empowers the Recorder to hold his Court for the trial of such cases at any place in Burma which the Local Government may direct.

"As regards civil appeals, we have left matters very much as they were. From the Recorder's decisions, in cases where the decree is for a less sum than R3,000, no appeal lies; between R3,000 and R10,000 there is an

appeal to the High Court at Calcutta; above Rs. 10,000 to the Privy Council. This appears a somewhat arbitrary division, but, so far as I have been able to ascertain, it is not objected to by litigants and does not seem to have worked otherwise than satisfactorily during the last quarter of a century. The returns of the High Court show that, for a period of ten years, from 1879 to 1888, there were only sixteen civil appeals and ten references from Burma; and, considering that Calcutta is quite as accessible from Burma as for instance from Assam, these figures are very significant.

"From the decisions of the Judge of the Town of Maulmain in civil suits an appeal lies to the Special Court, which for this purpose is composed of the Recorder and the Judicial Commissioner. As a Court of Reference or of Criminal Appeal, the Special Court has a wider range, and may be resorted to in suits pending before, or cases tried by, one of the judicial officers of whom it is ordinarily composed. To obviate any difficulty that might arise from the Court being thus constituted the Bill provides that the Local Government may associate the Judge of the Town of Maulmain with the Judicial Commissioner and the Recorder for the hearing of any particular case or class of cases. As the Special Court has hitherto sat for only about nine days in the year, the work cannot be heavy.

"With regard to the admiralty jurisdiction of the Recorder, we have made no change. As regards insolvency, the Bill provides that in the Towns of Rangoon, Maulmain, Akyab and Bassein the law in force in the presidency-towns, and not that laid down in the Code of Civil Procedure, shall be applicable. In divorce cases we have substituted the Special Court for the High Court at Calcutta.

"Advantage has been taken of the introduction of this Bill to declare the effect of certain enactments in Lower Burma, and to remove difficulties which, upon a careful examination of the laws which constitute the Burma Code, have been found to exist; but, as these matters are fully specified in the Report of the Select Committee, I need not detain the Council by further alluding to them at this stage of the Bill."

The Council adjourned to Friday, the 1st March, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 27th February, 1889.

Government of India Central Printing Office.—No. 477 L. D.—28-2-89.—316.—G. R.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 1st March, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G. G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. Steel.
The Hon'ble Sir Dinshaw Manockjee Petit, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Durga Charn Laha, C.I.E.
The Hon'ble Maung Ôn, C.I.E., A.T.M.
The Hon'ble Muhammad Ali Khan.
The Hon'ble J. W. Quinton, C.S.I.

NEW MEMBERS.

The Hon'ble MUHAMMAD ALI KHAN and the Hon'ble MR. QUINTON took their seats as Additional Members.

MERCHANDISE MARKS BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to amend the Law relating to Fraudulent Marks on Merchandise be taken into consideration. He said :—

"The Bill has been most carefuly considered by a Select Committee, three members of which belong to the mercantile community. The amendments which have been introduced were for the most part suggested by Chambers of Commerce and other bodies similarly conversant with mercantile affairs; and

I think I may claim for the Bill as it stands that it is the outcome of the mature experience of the recognized organs of the commercial classes in India.

"The Bill relates to all classes of merchandise, and not merely to piece-goods, as some have erroneously supposed. It applies to articles of merchandise manufactured in India, as well as to those imported from other countries, whether by land or sea. And it deals with three classes of offences—(1) the imitation of trade-marks; (2) the application to goods of false trade-descriptions, that is, of words or figures indicating that goods are something which in fact they are not; and (3) trading in falsely marked goods.

"As regards the imitation of trade-marks the Bill follows the provisions of the Indian Penal Code, but gives a wider definition to the word 'trade-mark'. It often happens that a trade-mark is applied to articles not actually manufactured by the owner of the trade-mark. Dealers both in India and elsewhere frequently have a particular class or quality of goods specially manufactured for them, which are known in the market by their name, and bear their brand, and are thus identified more with them than with the actual manufacturers. To protect the property in marks of this kind we have enlarged the definition of 'trade-mark' so as to cover marks used to denote that goods are either the manufacture or the merchandise of a particular person.

"As regards trade-descriptions, the main provisions of the English Merchandise Marks Act, 1887, have been adopted. The Committee has reduced the punishment for applying false trade-descriptions or dealing in falsely marked goods to those provided in the Penal Code for using false trade-marks. The offences being similar in character it seemed desirable to follow the Indian law rather than the more stringent provisions of the English Statute.

"It may be convenient here to notice an important alteration of principle in regard to offences under this Bill. Ordinarily it is incumbent on the prosecution to prove that the person charged had acted with intent to defraud; under the law now proposed it is incumbent on the person charged to prove that he acted innocently. In this respect, however, a distinction is made between the originators of the fraud, that is to say, those who make or apply false trade-marks or descriptions, or are responsible for their use, and mere dealers in falsely marked goods, whether as agents for sale or retailers. The former must prove absolutely that they acted without intent to defraud; the latter need only show that they took reasonable precautions, had no ground to suspect fraud and have given the prosecution all information in their power. Honest traders should have no difficulty in doing this.

"So much in regard to offences and their punishment. With regard to prevention, the proposed amendment of the Sea Customs Act, whereby the importation of falsely marked goods into British India will be prohibited, will be the most efficient weapon in the hands of the authorities. But, as I said on introducing the Bill, the successful working of these provisions of the Act will depend on the extent to which the mercantile classes co-operate with the custom-house authorities. There will be difficulties no doubt here, as there were in England.

"In their Report for the year ended 31st March, 1888, the Commissioners of Her Majesty's Customs write:—

'To have established a system of exhaustive examination of imported goods would have entailed a very large additional expenditure for the increased staff which would have been required; and there was the still more forcible objection that any such system would involve serious delay and inconvenience in the delivery of goods. There can be little doubt that if the trade at large had been exposed to constant risk of delay, or even to any considerable check in the present system of rapid delivery of goods, there would have been complaint that the evil to trade which the Act was intended to remedy was more than overborne by the evils which it had created. We had therefore to endeavour to give all reasonable effect to the intention of the Act without appreciable cost to the tax-payer, and at the same time to preserve the advantages of a restricted tariff which naturally facilitates the free movement of trade.'

"Fortunately, in India, we shall have the benefit of the experience gained in England during the past two years, and the Government will be glad to receive the assistance of the mercantile community in framing regulations which will secure the due operation of the Act without unnecessary friction or expense to the public.

"The provisions thus far summarized do not go beyond those of the English Act; but in one important respect the Select Committee has felt itself at liberty to take a step in advance of English legislation. We have added to the Bill clauses requiring all goods sold by length or the piece to have their real length stamped on them in standard yards before they are brought into British India in the case of imported goods, and before they are removed from the factory in the case of goods manufactured in British India. The adoption of a compulsory provision of this kind was advocated by the Madras Chamber of Commerce, and has been strongly pressed upon us by the Bengal Chamber. In a communication received by us from the latter body it is stated:—

'A very important suggestion put forward by the Sub-Committee—though with one dissentient—is that the stamping upon all goods sold by length or the piece of the length

of such goods in standard yards of 36 inches or fractions of a yard should be made compulsory.

'The Committee of the Chamber of Commerce have, after special consideration of the principle here involved, come to the decision that the interests of the trade generally, of the honest trader and of the Indian consumer require them to give to this recommendation their strong support. The scope of the "Indian Merchandise Marks Act" is so wide that, as regards goods sold by length, a door would be left open for a resort to those fraudulent practices the measure is intended to combat if the importation of goods not bearing a stamp of length were permitted. The Committee have made enquiries which satisfy them that even in Calcutta this way of escaping the provisions of the Act has already begun to be availed of, and they have reason to believe that the importation of goods having no stamp of length is on the increase.

'Some five years ago a powerful agitation against "unstamped goods" sprung up in Bombay and led to a combination on the part of native dealers which resulted in the almost total displacement of such goods in the Bombay market. The agitation spread to Calcutta, where it forced itself on the consideration of the Chamber of Commerce, and induced the Committee to sanction special arrangements for the protection of native buyers, not only against goods not stamped with an indication of length but also against goods incorrectly so stamped. To-day the Committee feel themselves justified in saying that the experience of the various Indian import markets points very clearly to the mischief which will result from allowing goods to be brought forward for sale bearing no indication of their length, and on this point they would ask to be excused if they briefly mention some of the evidence which has been put before them.

'In Calcutta itself a trading firm in the import trade felt themselves compelled to stamp the length on certain goods, because they discovered that the goods they had imported unstamped were being fraudulently stamped in the bázár.

'At Karáchi the importation of unstamped goods has quite recently almost disorganised that market. The Committee have before them a notice, published at Karáchi, and dated 1st of October, 1888, in the Sindhi, Marwari, Persian and Arabic languages, which runs as follows :—

"*Notice—Caution.*

'"Dealers in European piece-goods are warned that for some time past goods have been imported and sold in the Karáchi market bearing no length stamp as has been the invariable custom up to this time.

'"Buyers of goods without length stamp plainly written on each piece run the risk of being deceived."

'The state of things which has given rise to the necessity for such a notice as that just quoted would probably cause at Karáchi, as it did in Bombay and Calcutta, a combination amongst dealers against the purchase of unstamped goods; and, as at Bombay and

Calcutta, such a combination would not do more than check, to a greater or less extent, the evil at which it was directed and would fail to stop it altogether. The question which thus forces itself upon the consideration of the legislature is whether, such an Act as the Indian Merchandise Marks Act being under consideration, the mercantile communities of India should be left to combat an admitted mercantile mischief by the proved ineffective means of combinations amongst native buyers.

'The Committee of the Chamber of Commerce are in a position to supplement what they have said above by evidence not only weighty in itself but so independent in character as, in their opinion, to increase its value. During the discussions on the Bill the Committee received from Mr. James Kerr Bell, a member of the Manchester Chamber of Commerce, a letter dated from Madras, the 19th December, 1888, in which that gentleman says :—

'"I find in my visits to the Indian bázárs that the *omission* of length stamps is a source of great misrepresentation in the sale of piece-goods. I would suggest that the new Act should make the stamping of exact length compulsory. In this way the honest trader would be protected from the many underhand ways which are at present in vogue to elude the scope of the English Act."'

'The Madras, Bombay and Karáchi Chambers of Commerce and the Bombay Mill-owners Association were consulted by the Committee with reference to this proposal of the Bengal Chamber and requested to state their opinion as to whether or not effect should be given to it. These bodies have all replied that in their opinion the fullest effect should be given to the proposal. And the recently established Chamber of Commerce in Upper India, in a valuable communication received since the publication of the Report, desire 'to emphasise the vital importance of the suggestion.' In view of this very unanimous expression of opinion, the Committee felt bound to take the desired action; but, as no such provisions were contained in the Bill when originally introduced, and in order to give time to dispose of unstamped stocks, section 19 postpones the operation of these clauses as regards foreign made goods until the 1st of August, and, as regards piece-goods made up in bales in factories in British India before the day on which it is proposed that this Act shall come into force, until the 1st of July, 1889.

"An enquiry has been made as to what is to become of existing stocks of falsely marked goods after this Act has come into operation. I can only say that, directly a trader gets notice that a mark on his goods is a false mark, he had better remove it or he may get into trouble.

"It remains to notice one or two points in connection with prosecutions under this Act. Acting on a suggestion of the Bengal Chamber of Commerce that

the Governor General should be empowered to make rules for the guidance of Courts as to the mode of measurement to be adopted, and the amount of variations to be allowed—matters of considerable technical difficulty—section 16 enables the Government by notification in the official Gazette to issue instructions for observance by Criminal Courts in such matters. The Select Committee has also introduced a section, in accordance with the precedent of the English Act, empowering Courts to award costs to either prosecutor or defendant, as the justice of the case may require. The Committee was unable to adopt the suggestion of the Bengal Chamber of Commerce that all prosecutions under the Act should be conducted by the Public Prosecutor, as they were unwilling to fetter the action of private firms or public bodies that might be interested in the efficient working of the Act; but in section 15 the Committee has given effect to a very general desire that some limit should be fixed to the time within which prosecutions for offences against the Act may be commenced, and has adopted in this respect the same rule which prevails in England, namely, three years after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever first happens.

"I have now gone through the principal provisions of the Bill, and it only remains for me to express, on my own behalf as well as that of the Select Committee, our best thanks for the great assistance which we have received from the criticisms and suggestions supplied by the various authorities to whom the Bill was referred for consideration. The Chambers of Commerce especially have afforded most valuable information and assistance in framing the draft so as to meet the circumstances of trade in India, and, if they will be equally ready to do their part in carrying out the provisions of the Act, I have no doubt it will be successful as a working measure."

The Motion was put and agreed to.

The Hon'ble MR. STEEL moved that in section 10, sub-section (*2*), of the Bill, in clause (*f*), sub-clause (i), to be added to section 18 of the Sea Customs Act, 1878, after the word "stamped" the words "in English numerals" be inserted; and that in section 12, sub-section (*1*), of the Bill, after the word "stamped" the words "in English numerals" be inserted. He said:—"This amendment is a late suggestion of the Bengal Chamber of Commerce. Under the Bill as it stands each piece of goods must be stamped with the length, but there is no stipulation as to whether this shall be expressed in numerals or in words. The effect of the amendment will be to require the length to be stamped in English numerals. The English numerals, derived from the Arabic,

are perfectly well understood throughout the country; but the numbers expressed in words of a foreign language would be unintelligible. The amendment is considered to be of importance. I believe it will be accepted by the hon'ble member in charge, and I trust the Council will assent to it."

The Hon'ble MR. SCOBLE said:—"I have no objection whatever to this amendment."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE moved that the Bill, as amended, be passed.

The Hon'ble RÁJÁ DURGA CHARN LAHA said:—"As a member of the Select Committee to whom this Bill was referred for consideration, I have hardly anything to add to the remarks which have been made in their Report. The Bill appears to satisfy the legitimate requirements of trade, but I must observe that a great deal will depend on its proper and considerate working before it can fulfil the objects for which action has been taken by the legislature. I am sure that the Chamber of Commerce will gladly lend its assistance to enable the Government to carry out the objects of the Bill to the satisfaction of all parties concerned."

The Hon'ble SIR DINSHAW MANOCKJEE PETIT said:—"Since the Report of our Select Committee on this Bill was presented by my hon'ble friend Mr. Scoble to Your Excellency's Council on the 8th ultimo for consideration, I have again considered the question of stamping breadth as well as length on piece-goods which was discussed by the Committee, and, as the Bill is still under consideration of Your Excellency's Council, I venture to express some views on the subject. Owing to the practice of not stamping the breadth, buyers are deceived by wholesale and retail dealers, whereby they suffer great loss in the same way as they suffer loss when length is not stamped. For instance, a buyer goes to a market to buy a piece of cloth of the known breadth of 40 inches; he buys a piece without measuring the same under the presumption that it is of the usual breadth; but when it afterwards turns out to be narrower by one to two inches, he would suffer loss in respect of the deficient breadth from $2\frac{1}{2}$ to 5 per cent. Perhaps it may be urged by some that a provision for compulsory stamping of breadth is not necessary, as a buyer can easily see the breadth at a glance. Against this argument I should say that I know from my experience that even dealers well versed in piece-goods are unable to

detect shorter breadth (say two to three inches in 50 to 60 inches breadth, one to two inches in 40 to 50 inches, and half to one inch in 20 to 30 inches) than the usual breadth without actual measurement; and this being the case consumers cannot at a glance find out short breadth. If one has to buy about a dozen pieces of different descriptions of cloth in a market and his time be limited, it is easy to judge whether he will ever be able to detect short breadth without wasting a great deal of his time in going about measuring the breadth of every description of cloth from shop to shop, in order to satisfy himself as to whether the cloth he is purchasing is of the usual breadth or not. If therefore, the correct breadth be stamped on a piece, the buyer will not be deceived, and he can make the purchase without any doubt. This will be a great boon to the public at large, and I dare say the same, instead of doing any injury to the trade, will do it a great deal of good. I therefore, under these circumstances, trust that Your Excellency's Council will see their way to insert the necessary provision in the Bill."

The Hon'ble MR. STEEL said :—"I have little occasion to address the Council on the subject of this Bill, but it would scarcely be fitting that a measure of so much interest and importance to the mercantile community should pass into law without remark from me.

"I am happy to say that I have no criticism to offer except by way of commendation. There has long been a general consensus of opinion that legislation was called for to protect the consumer from fraud and the honest trader from unfair competition. While fully sharing this opinion the representatives of commerce have considered that it would be premature to press for legislation until opportunity had been afforded to watch the operation of the English Act of 1887, with the object of avoiding any defects which might be observed in the practical working of the law.

"Sufficient time having elapsed, we think the proper occasion was chosen for the introduction of this Bill. We acknowledge with gratitude to the hon'ble member in charge that he has taken full advantage of the experience gained. His original draft Bill was an extremely careful and able endeavour to adapt the law to the special conditions of Indian trade. The Bill was energetically discussed and considered by the Chambers of Commerce of Bengal and Bombay and other competent authorities. Sundry valuable suggestions were offered which have been adopted by the Select Committee, and the Bill now comes before the Council fortified by the approval of those most interested in its provisions. My hon'ble friend Sir Dinshaw Manockjee Petit has expressed the

opinion that it would have been proper to require the stamping of the breadth as well as the length on piece-goods. He made the same suggestion to the Committee, and no doubt it is in accordance with the principle of the Bill. It was, however, considered that the proposal was unnecessary, and therefore inexpedient. The buyers of piece-goods can easily inform themselves of the width of such goods by inspection, and under this condition they are considered quite competent to protect their own interests. Any incorrect marking of width would, of course, be an infraction of the law. In dealing with a subject of so much difficulty and complexity it would be too sanguine to expect perfection, and it is quite possible that some modification of the law may be called for in the early future; but I have authority for saying that the Chamber of Commerce accepts the responsibility of recommending the legislature to pass the Bill in its present form."

The Motion was put and agreed to.

MADRAS CORONER'S BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to abolish the Office of Coroner of Madras be taken into consideration. He said :—"The Bill is a short one and its general effect may be stated in a few words. The second and third sections repeal such parts of the existing law as require the appointment of a Coroner. The fourth section repeals a clause in the Code of Criminal Procedure which prevents the police of Madras from holding inquests under sections 174 to 176 of that Code, and provides that those sections shall be read with certain modifications within the limits of the City of Madras. The practical effect of the measure therefore will be that inquests will be held in future by certain specified police-officers instead of by the Coroner, and, subject to the modifications already alluded to, the system will be that which prevails throughout British India, including nearly all its largest towns.

"Under section 174 the officer will usually be the officer in charge of the station, but, like the Coroner, he is required to associate with himself a jury or pancháyat of respectable neighbours. According to the Code and the Bill as drafted, the jurors would be two or more, but in the Select Committee we thought it more prudent to require five at the least according to the present practice under the Coronet. They have to draw up and sign a report or inquest

paper, showing the apparent cause of death and full particulars of any marks of injury: also, as far as it can be ascertained, the nature of the weapon or instrument, if any, by which such injuries seem to have been inflicted. To enable them to do this, the station-house-officer, or other person presiding, is required by sub-section (3) to cause a *post mortem* examination to be held by the district surgeon or such medical officer as the Government may direct. He is bound to do this whenever the death appears to have been caused by violence, whenever there is any doubt about the cause of death, and whenever there are any other circumstances which seem to render such an examination desirable. He is also required with the jury to examine all persons apparently acquainted with material facts which may throw light on the case.

"Then, under section 175, the Local Government and, subject to its control the Commissioner, are empowered to make rules prohibiting the station-house-officer from closing the inquest when the presence or sanction of a superior officer may be considered necessary. The most important rules contemplated are, that whenever there appears serious ground for suspicion the inquest shall be held by an inspector or officer of still higher grade, and that in other cases the body shall not be burnt or interred till such superior officer has seen and considered the proceedings. Lastly, by section 176, the Chief Presidency Magistrate, or some other Magistrate appointed by him, is required in case of a death in prison or police custody, and authorised in any other case, to supersede the action of the police and himself hold such investigation as may be necessary.

"It will thus be seen that the lowest officer by whom any inquest whatever can be held is a station-house-officer, and I am glad to say that the Government of Madras, recognizing the responsibility which the legislature has thought fit to cast upon an officer in charge of a station, has recently assigned him a special allowance, over and above the pay of his grade, which will afford a material guarantee for the faithful performance of his duties. Further, his proceedings will be forthwith reviewed by his divisional superior, and, whenever there is serious ground for suspicion of crime, his action will be stayed and superseded by an officer of superior rank or, if a Magistrate sees cause to intervene, by a regular magisterial investigation.

"So much as to the officer by whom future inquests will be conducted. I have no doubt that the Madras police can be safely entrusted with the duty, and no petitions against the Bill have been received; but I have reason to

believe that the nature and effect of an inquest is misunderstood in some quarters, and I would ask leave to make a few short remarks on that point also.

"An inquest is not a judicial enquiry in the sense that a decision then arrived at has any conclusive effect whatever. Its object is simply to place on record the apparent cause of death, and secure that a sufficient medical examination is held before it is too late. The verdict is merely a contemporaneous record of things seen and *primâ facie* conclusions, and would not in itself, at all events not in a criminal case, be even *primâ facie* evidence either of the existence of those things or the correctness of those conclusions. Nor does the enquiry extend beyond the apparent cause of death. An instance which will be familiar to every one in Madras is the terrible fire which occurred in the People's Park on the last night of 1886. The Coroner's inquisition was very brief: he stayed his hand as soon as it was made clear that the deceased had met their death from burning. When subsequently the Government desired to have the origin of the fire investigated, they made use of the Coroner's agency, it is true, because there was no other agency available, but they had to award him special remuneration for presiding at the enquiry as it was outside his proper duties. Under the present Bill such an investigation would be held by a Presidency Magistrate.

"I think that with the safeguards I have indicated and under the eye of the very efficient Madras Press the duty of drawing up a record of visible injuries, of the medical opinion and the apparent cause of death may safely be entrusted to the Madras police. I now move that this Bill be taken into consideration."

The Hon'ble THE MAHÁRÁJÁ OF VIZIANAGRAM said:—"Before this Bill will receive Your Excellency's final sanction I beg to submit that while I fully agree with every cogent reason lucidly set forth in one of the leading columns of the *Madras Mail*, a most reasonable and reliable journal in that presidency, I saw no objection to subscribing my name to the Report of the Select Committee now under Your Excellency's consideration for two reasons:—the first is that the Bill only gives the requisite power to the Madras Government, but does not directly abolish the office of Coroner; and my second reason is that I have every faith that the Government of Lord Connemara will not put this or any other Act into execution unless they see very strong reasons for their doing so."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Friday, the 8th March, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 6th March, 1889.

Government of India Central Printing Office.—No. 497 L. D.—7-3-89.—316.—W. B. G.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 8th March, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. Steel.
The Hon'ble Sir Dinshaw Manockjee Petit, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Durga Charn Laha, C.I.E.
The Hon'ble G. H. P. Evans.
The Hon'ble Maung Ôn, C.I.E., A.T.M.
The Hon'ble Muhammad Ali Khan.
The Hon'ble J. W. Quinton, C.S.I.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to amend the Indian Succession Act, 1865, the Probate and Administration Act, 1881, and the Court-fees Act, 1870, and to make provision with respect to certain other matters be taken into consideration. He said:—

"The first part of this Bill relates to amendments of the Indian Succession Act. The principal object of these amendments is to compel executors and administrators to exhibit inventories and accounts of the estates which come to their hands. The law requires that, when probate or letters of administration are granted, the executor or administrator shall undertake to make a true in-

ventory of the property and effects of the deceased, and also to render a true account thereof. The inventory should be exhibited to the Court by which the grant was made, within six months from the date of the grant, and should contain a 'full and true estimate of all the property in possession, and all the credits, and all the debts' owing to the estate; and the account, which should be exhibited within one year from the same date, should contain a statement of the assets that have come to the hands of the executor or administrator, and the manner in which they have been applied or disposed of.

"Although the duty is thus clearly indicated, the provisions of the existing law have not proved sufficient to enforce the production of these statements, which are of such obvious necessity, especially where the interests of women, children and absentees are concerned. In the absence of penalties, carelessness has become very much the rule. The Bill therefore provides, by section 3, that on any application for probate the petitioner shall, in addition to other particulars, state the amount of assets which are likely to come to his hands, and thus furnish a basis for testing the accuracy of his subsequent inventory and account. In order to give clear notice to executors and administrators of the periods within which the inventory and account respectively should be exhibited to the Court, sections 4 and 5 provide for the insertion of those periods on the grants themselves; and, lest those periods should be insufficient, section 7 empowers the Court to extend them in proper cases. Failure to exhibit an inventory or account is made, by section 2, a 'just cause' for revoking or annulling a grant of probate or letters of administration; intentional omission to do so, when required by the Court, is made punishable under section 176 of the Indian Penal Code; and the exhibition of an intentionally false inventory or account is put on the same footing under section 193 of the Code as the fabrication of false evidence for the purpose of being used in a judicial proceeding.

"In section 9 the Indian law as to the application of the moveable property of a deceased person to the payment of his debts is brought into accordance with the English law on the same subject; and section 10 provides that, when a grant of probate or letters of administration is revoked or annulled, the probate or letters shall be at once delivered up to the Court by which the grant was made, and not left in the possession of the person judicially declared to be no longer entitled thereto.

"The second part of the Bill relates to the Probate and Administration Act, 1881, and sections 11, 12, 13, 15 and 17 merely extend to that Act the amend-

ments with regard to inventories and accounts which I have already described as proposed to be made in the Indian Succession Act. Section 14, as I stated when presenting the Report of the Select Committee, extends to native executors and administrators in India the fuller powers to deal with the estates of deceased persons which are given under the English law; and it is not necessary that I should again recapitulate the arguments in favour of this proposal.

"The third part of the Bill removes an anomaly with regard to the stamping of administration-bonds.

"In the fourth part of the Bill, section 19 is intended to validate transactions by native executors and administrators since the passing of Act V of 1881, which, though proper in themselves, might be impugned on the ground that they were carried out without the consent of the Court. And section 20 gives the Chief Controlling Revenue-authority a very useful discretion in regard to the remission, in whole or in part, of penalties and forfeitures in cases in which an insufficient court-fee has been paid on probates or letters of administration.

"These are the principal provisions of the Bill. Its operation will not be very extensive. The Succession Act does not apply to any Hindu, Muhammadan or Buddhist, and the Probate Act is a permissive measure limited in its operation to Bengal, the Punjab, Assam, Burma, the towns of Madras and Bombay, and the Andaman and Nicobar Islands. It would, I think, do much to quiet titles and obviate litigation if a wider scope were given to the latter enactment; and I hope the amendments of the law now proposed may lead to its extension to other provinces."

The Hon'ble MR. EVANS said:—"I entirely agree with what has been said by my hon'ble and learned friend as regards the changes introduced by this Bill, and the alteration in section 283 of the Succession Act provides a rule for the payment of the debts of foreigners dying in India out of Indian assets, which is conformable to the views of the best text-writers and the latest English decisions, and which is at once just and convenient. Other amendments tend to secure the keeping of better accounts and inventories of estates. The main change, however, introduced by the Bill is the enlargement of the powers of dealing with assets given by section 90 of the Probate and Administration Act to executors and administrators.

"The necessity for the change was very clearly explained when the Bill was introduced and referred to a Select Committee, but I trust it will not be considered superfluous if I add a few remarks upon it.

"Originally grants of probate and administration issued from the ecclesiastical side of the English Courts, and were, and still are, in England confined to personal property, and did not affect land.

"They conferred an absolute power on the executor or administrator to deal with the personal property by way of sale or otherwise for the administration of the estate of the deceased and the payment of his debts.

"This jurisdiction, so far as European British subjects were concerned, was introduced into Bengal by the Charter of the Supreme Court in 1774, if not earlier, but was exerciseable by the Supreme Court only.

"It was found so convenient in practice that the native inhabitants of Calcutta applied for similar grants, and, though there was great doubt as to the jurisdiction, a practice grew up of issuing such grants to natives in Calcutta when they chose to apply for them. The privilege was largely availed of.

"It was found very inconvenient that lands and houses belonging to the migratory and transitory population of Europeans in India could not be sold to pay their debts without ascertainment of the true heirs, which was often difficult; and in 1828, by an Act of Parliament, 9 Geo. IV, c. 33, known as Fergusson's Act, the executors and administrators of European British subjects were empowered to sell the landed as well as personal property of the estate, and apply them in payment of debts.

"This did not apply to natives, and the grants in their case still affected only the moveable property and outstandings.

"In 1865 the Succession Act was passed affecting all persons in India other than Muhammadans, Hindus and Buddhists, and giving full power to the executor and administrator to dispose of all the estate of the deceased, moveable and immoveable.

"In 1870 the Hindu Wills Act was passed affecting Hindus, Jains, Sikhs and Buddhists in Bengal and in the towns of Madras and Bombay.

"This conferred on executors appointed by a will, or administrators acting under a will, the same full power as is given by the Succession Act to Europeans, &c., but did not affect Muhammadans or provide for administration on an intestacy.

"This Hindu Wills Act worked well in Bengal, though practically compulsory to the extent that no one could, where it was in force, claim in Court under a will without taking probate, and I do not think any serious complaint was made that the powers given to executors were too large.

"In 1881 the Government resolved to give facilities to all Muhammadans, Hindus, &c., in India to obtain grants of probate and administration of the estates of deceased persons, whether they died testate or intestate. But they made it entirely optional (except as to wills in Bengal) with the large class comprising the bulk of the natives of India to avail themselves of this privilege or not as they chose, upon payment of a duty on the estate, and further provided that no Courts, except in Bengal, should issue such grants until empowered by notification of the Local Government with the assent of the Governor General in Council.

"But unfortunately they hampered the grants with a provision that neither executors nor administrators should have any power to dispose of any property of the estate, moveable or immoveable, without the consent of the Court issuing the grants, unless the Court at the time of issue should dispense with the provision. This went very far to render the grants useless and embarrassing. The difficulties which arose, and the need for enlargement of the powers, have been fully discussed in a previous stage of the Bill, and I will not recapitulate them. The main question which has had to be considered is whether we should give to the executors and administrators of the Hindus and Muhammadans of India the same full powers as are given to the executors and administrators of European British subjects and others by the Succession Act. The conclusion arrived at, after considering the history of the Acts and the circumstances of the country, is that it would be wise and safe to give to executors who are chosen by the testator himself the fullest powers over immoveable as well as moveable property, subject to the provisions of the will under which they act, and to compel them to take the opinion of the Court only when it becomes necessary to do something which is contrary to the will. The fact that full powers were exercised by Hindu executors in Bengal from 1870 to 1881 without complaint goes far to prove that such power can be safely given.

"As regards administrators, we have deemed it absolutely necessary to give them full power of dealing with moveable property, shares, Company's paper, outstandings, &c., but we have, in deference to the fears expressed by many officials in 1881 and to the opinion which seemed to prevail among many native gentlemen of experience, accepted the new section as drafted, and have

not given to the administrators the power to dispose of immoveable property without the sanction of the Court. The powers they will possess as to immoveable property in the capacity of administrators will be the same as those possessed by the statutory guardians of infants. It is no doubt anomalous that administrators under the Succession Act should have larger powers than administrators under the Probate and Administration Act, but this is necessarily a country of anomalies, and the Procrustean principle of legislation is dangerous. We have done our best to place within the reach of the Hindus and Muhammadans the means of obtaining such powers as to the administration of the estates of deceased persons as appear necessary for the transaction of business, and as they themselves appear to desire.

"I observe that from 1881 to the present time several of the Local Governments have abstained from issuing the notifications necessary to enable any Courts in their provinces to issue grants of probate and administration under this Act. There may be local areas so uncivilised that it is not desirable to introduce the system, even as an optional one. But this is not the case with the greater portion of these provinces, and it seems hard upon the finances of the Government and upon the people that they should not have the opportunity of showing whether they value these grants sufficiently to pay the duty on them.

"When the opportunity has been given the demand for them has gone on increasing, and it will, I doubt not, increase more under the Act as now amended."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

SUCCESSION CERTIFICATE BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Report of the Select Committee on the Bill to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons be taken into consideration. He said:—

"The object with which the Succession Certificate Bill was introduced was explained by the Hon'ble Mr. Westland when the Bill was brought before

this Council on 22nd August last, but it will be convenient if I re-state at this time the main reasons which led to its introduction.

"As matters now stand, the law, which provides for the collection of a stamp-duty of 2 per cent. on the value of all debts and securities of a deceased person dealt with under the authority conferred by a succession certificate, is frequently evaded.

"The existing law regarding the grant of such certificates is contained in Act XXVII of 1860, but this Act does not provide either for a stamp-duty or for the entry in the certificate of the debts to be collected. In the Court-fees Act, VII of 1870, Schedule I, article 12, it is provided that a duty of 2 per cent. shall be levied on the amount or value of the property in respect of which the certificate is granted, and it is further provided that the person to whom the certificate is granted, if the effects to be dealt with exceed R1,000 in value, shall, after the expiration of twelve months from the granting of the certificate, and at such other dates as the Court may require, file a statement on oath of all moneys recovered or realised by him under the certificate. The latter provision has been to a great extent a dead letter. The person wishing to obtain a certificate enters, in the first instance, only a portion of the debts due to the estate, obtains a certificate entitling him to collect all the debts due to the estate, collects under the certificate, neglects to certify to the Court the total amount of debts collected, and in this way escapes payment of a large portion of the fee which the law intended him to pay.

"Evasion has also been facilitated by the provisions of section 2 of Act XXVII of 1860, which enable a person not holding a certificate to recover a debt in Court if the Court is satisfied that payment of the debt was withheld from fraudulent and vexatious motives and not from any reasonable doubt as to the party entitled.

"It is now provided in section 6 of the Bill that an application for a certificate must set forth the debts and securities in respect of which the certificate is applied for; and under section 14 (*1*) such application must be accompanied by the deposit of the proper amount of fee.

"If the person applying for the certificate omits to enter any debt or security in his application, whether he does so through oversight or intentionally, and finds thereafter that he cannot collect the debt or deal with the security because it has not been so entered, he will be at liberty to apply to the Court to extend the certificate to such debt or security, but in such case he will be required to pay 3

per cent. on its amount instead of 2 per cent. This provision will have the effect of preventing an applicant from speculating on the possibility of being able to collect debts without entering them in his application and paying the proper fee. If an applicant chooses to speculate in this way, he will run the risk of having to pay 3 instead of 2 per cent.

"It is also provided in the present Bill that no Court shall pass a decree or proceed to execute a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased, except on production of a certificate granted under this Act, and having the debt specified therein, or on production of other proper authority to collect the debt.

"The Select Committee has further provided that in future a certificate granted under the Succession Certificate Act shall not afford indemnity to persons paying under it except in respect of debts entered in the certificate. The provision seems a very reasonable and proper one, and will undoubtedly check the disposition which exists at the present time to obtain and use a certificate while omitting to pay the fee fixed by the legislature. If a debtor pays his debt to a person holding a certificate, he will obtain complete indemnity if his debt is mentioned in the certificate. If, however, he chooses to pay without reference to the certificate, and merely on his general knowledge that the person claiming to recover the debt is legally entitled to do so, he will not be able to make the certificate the ground of a plea for indemnity. He acts entirely on his own judgment and must accept the consequences of so doing.

"If a person claiming to be entitled to the effects of the deceased finds that there are debts which he can collect without a certificate, or without entering them in his application, and if the debtor chooses to pay such debts without the indemnity which is given by the entry of the debt in a certificate, the law will not interfere. If the parties to the transaction prefer not to avail themselves of the facilities and protection which the law provides, they need not pay the prescribed fee, and they take the risk of any inconvenience or loss which such action on their part may involve.

"The provisions to which I have just referred are those which are of most importance, at any rate from a fiscal point of view, but there are others intended for the improvement of the law, to some of which I think it desirable that I should also call attention.

"In section 7, sub-section (*3*), of the Bill as it now stands, provision has been made which will enable the Court to prevent an application for a

certificate being perverted into a means for obtaining a decision on intricate and difficult questions of law or fact. Such decisions are not conclusive as to the rights of the parties concerned, and it is desirable that prolonged litigation, which is necessarily of an inconclusive character, should be discouraged. This is done by giving the Court power to stay proceedings when it considers it necessary to do so, and to grant a certificate to the person who appears *primâ facie* to have the best claim to it.

"Any person who may consider himself aggrieved thereby has his remedy in a regular suit. Any risk of loss to the parties legally entitled to the effects of the deceased arising from a summary decision of this nature is obviated by requiring that in every such case the Court shall require security to be given before the grant of the certificate is made. In other cases it will be optional with the Court to require security or not as the circumstances of the case may appear to require.

"Section 18 of the Bill as now amended also makes a very necessary provision for the revocation of certificates in certain cases.

"Under section 5 of the Bill power has been given to District Courts to grant applications for certificates; but it would obviously be very inconvenient and unduly expensive in some cases if every applicant had to attend at the Court of the District Judge, and the hardship would be specially great if the effects in respect of which a certificate was desired happened to be of small value. For this reason and for other reasons of less weight section 26 of the Bill as it now stands gives power to the Local Government to invest any Court, inferior to a District Court, with the functions of a District Court in respect of these certificates, as well as to cancel or vary any such notification.

"In the Bill as originally introduced it was proposed to repeal Bombay Regulation VIII of 1827, and I still believe that that course was in itself desirable. But Regulation VIII of 1827 applies to immoveable property as well as to debts and securities, and if it had been repealed it would have been necessary for the Bombay Government to authorise District and perhaps other Courts to receive applications for probate or letters of administration under the Probate and Administration Act of 1881.

"That course has not yet been adopted by the Bombay Government, and the local authorities in that presidency are strongly in favour of retaining Regulation VIII of 1827. In deference to their wishes the Regulation has been left on the statute-book, but advantage has been taken of the present

opportunity to amend the procedure under the Regulation in question and to assimilate it, as far as practicable, to the procedure of the present Bill. Consequently the provisions of the present Bill as regards the particulars of the debts and securities to be set forth in an application for a certificate, the limitations of the powers that may be granted by a certificate, the taking of security, the extending of a certificate to a debt or security not originally specified therein, the extent of the indemnity afforded to debtors, the revocation of certificates, appeals, the surrender of certificates which have been suspended or become invalid, and regarding other minor matters, as well as the provisions of section 98 of the Probate and Administration Act, 1881, regarding the exhibition of inventories and accounts, have been made applicable to certificates under Bombay Regulation VIII of 1827.

"In conclusion, I may mention that it has been provided that the Act shall not come into operation till 1st May, 1889, so as to afford time for the making and circulation of the necessary translations."

The Hon'ble MR. SCOBLE said:—"As this Bill has a legal as well as a fiscal aspect, I will venture to add a few words to the statement which has just been made by my hon'ble friend Sir David Barbour.

"The Bill is not designed to furnish a complete system of administration of estates, but rather to give security to those who are called upon to pay debts to the representatives of deceased persons in the absence of probate or letters of administration. In this country, where the personal law varies so greatly, according to the origin or religion of the individual, it is necessary that some simple method should exist whereby debtors to a deceased creditor may be certified that they will not be called upon to pay their debts more than once. If a will is left and probate obtained, or if letters of administration are taken out, they have this security by paying the debts to the executor or administrator; but these cases are comparatively few, and, where the succession is disputed, the debts either remain unpaid or the debtor runs the risk of paying the wrong person. To obviate this difficulty a system was long ago introduced of granting certificates to persons claiming to be 'the representatives of deceased Hindus, Muhammadans and others not usually designated as British subjects,' which served the double object (1) of conclusively establishing the representative title of the holder against all debtors to the deceased, and (2) of affording full indemnity to all debtors paying their debts to the person in whose favour the certificate had been granted.

"It would be wearisome to trace the history of legislation on this subject. Act XXVII of 1860 embodies the existing law in British India generally, though Bombay has, in Regulation VIII of 1827, a special system of its own, which gives to the certificate-holder rather more extensive powers and privileges than he enjoys in other provinces. The Bill, in deference to the wishes of the Bombay Government, leaves this Regulation unrepealed, though modifying it in certain respects; while it absolutely repeals Act XXVII of 1860.

"As my hon'ble friend has said, the principal feature of the Bill is that it limits the power of the certificate-holder as regards the collection of debts and securities of a deceased person to those debts and securities which are specified in the certificate. The fiscal reasons for this limitation are obvious; it is, I think, equally obvious that for the protection of the debtor the certificate should clearly show that the person seeking to recover the debt had satisfied a competent Court of his title to do so. It is not to be expected, nor is it the intention of the Bill, that the certificate should apply to all debts and securities belonging to the estate, or that the applicant should include in his certificate debts which he might expect to collect amicably without one: the value of the certificate will be where debts are contested, and it would not be fair to the defendant to put him to the expense and trouble of disputing the representative character of the claimant as well as the liability to the debt. Moreover, the insertion of the debt in the certificate may be expected to operate as a check upon false claims, for a man would scarcely pay duty on the amount of a debt which he did not consider himself legally entitled to recover.

"Section 4 of the Bill accordingly provides that no Court shall (*a*) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof, or (*b*) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, unless the person so claiming has established, by some method recognized by the law, his title to represent the estate of the deceased in regard to the claim.

"In laying down this rule the Bill follows the general tenor of the decisions of the High Courts which establish that a plaintiff is bound to prove his representative title before he can obtain a decree or execute a decree already obtained by the deceased person through whom he claims, though he may institute his suit or apply for execution without such proof provided he completes his title before decree or before execution issues.

"Section 6, which specifies the particulars to be given in applications for certificates, is drawn very widely so as to include applications by creditors, as well as by heirs, of a deceased person.

"In section 7 it is provided that proceedings on these applications are to be of a summary character. Under section 3 of Act XXVII of 1860, the Judge had 'to determine the right to the certificate'. This phrase has led to many conflicting decisions. The Bill adopts the ruling of the Madras High Court that in determining the right to a certificate the Courts are not required to enter on the determination of intricate questions of law or of fact, but that the proper course is to issue the certificate to the person who *primâ facie* has the clearest title to the succession, such as the natural heir, and to leave a person whose claim to a superior title is on reasonable grounds disputed to establish that title by regular suit. And, in deciding between various applicants who stand in pretty much the same relation to the deceased, the Bill further provides that the Court may have regard to the extent of interest, and the fitness in other respects, of the several applicants.

"As my hon'ble friend has mentioned, in section 18 provision is made for the revocation of certificates for just cause. Sections 21 and 22 provide for cases in which certificates have become superseded; and section 27 enacts that certificates which have become invalid from any cause shall be delivered up to the Court which granted them.

"The last matter to which I need refer is the power given by section 26 to Local Governments to confer upon lower Courts the functions of a District Court under the Act. If there is any great increase in the number of applications for certificates after the passing of this Bill, it will be essential that the Courts which are to exercise jurisdiction with respect to them should be more accessible and less expensive than District Courts."

The Hon'ble MR. EVANS said:—"The alterations made by the Bill, and the reasons for them, both from a fiscal and administrative point of view, have been so fully detailed by the hon'ble mover and the hon'ble Mr. Scoble that they have left little or nothing for me to say as to the details, except that I agree with what they have said.

"But I propose to make some observations upon the relation between the Bill and the one immediately preceding it, and upon the principles underlying them.

"Succession or, as they are often termed, death duties are recognised as one of the least objectionable forms of taxation. If there be one occasion more than another upon which a tax can fairly be levied upon property, it is when the owner has ceased to exist and the property is about to pass to a person who has done nothing to acquire it except being born into the world—an occasion on which he plays a passive rather than an active part.

"The Europeans in India, and the Eurasians, Jews, Armenians, Parsis and others who have not the privilege of being Muhammadans, Hindus or Buddhists, are practically obliged to take out probate or administration, as the case may be, and to pay the succession-duties on the whole estate or inheritance by the combined effect of the Succession Act and the Court-fees Act.

"It has long been seen that it would be fair in principle to render the payment of such duties compulsory on all alike. But principle is one thing: practice is another. It was found that it would be very difficult, if not impossible, without great hardship, to render it compulsory upon all the inhabitants of India to take out probate or administration so as to subject them to these duties. India, in spite of the ferment of Western ideas among the educated classes, is very immoveable and slow to change. It has often been found impossible by legislation to compel the inhabitants to do things which they have not been in the habit of doing and which they do not wish to do. Witness the abortive Regulation and Acts by which it was sought to force the raiyats to take leases from the zamindárs and the zamindárs to give leases to the raiyats.

"It takes years for any Act introducing a novelty to get known and worked in the remoter districts.

"If an Act like the Succession Act had suddenly been made compulsorily applicable for the whole of India, the consequences would have been very serious. The people would for a long time have paid no attention to it, and their dealings with their property after a succession would have been invalid, and much confusion and injustice would have ensued.

"But what can be got out of them in the way of succession-duties without friction or injustice it is, I take it, the duty of the Government to itself and to the class which pays these duties to get. There are two methods by which this object can to some extent be effected—one is by encouraging Hindus and Muhammadans to resort of their own accord to the probate and administration procedure on account of the certainty of title which it gives and its manifold advantages. Even if they did so, a very large quantity of Hindu property would

escape taxation under the present law, owing to the Mitakshara doctrine of survivorship among co-owners. The other method is by means of the Certificate Act, which is now being amended.

"The certificate procedure was introduced in 1841 for the purpose of protecting debtors from being harassed by conflicting claimants after the death of the creditor, and to facilitate the collection of debts on succession by the issue of a certificate which should render it safe for the debtor to pay the holder of it. Various amending Acts were introduced from time to time, and the certificates are now granted under Act XXVII of 1860.

"The certificates were made liable to a duty by the Court-fees Act of 1870.

"Theoretically the result was that no Hindu or Muhammadan could have the benefit of the aid of the Courts to enable him to collect debts as representative of a deceased person without obtaining a certificate and paying duty upon the amount of outstanding debts due to the estate. Thus, in theory he paid on outstanding claims, but not on property already in possession of the deceased, while his fellow-subjects paid on the whole estate. But in practice the result to the State in the way of taxation was very small. The first source of leakage, so to speak, was that the Court might dispense with the certificate if it thought the objection of the debtor to the creditor's title was frivolous. This, I am told, was very largely done by some Courts. Secondly, the applicant for the certificate seldom or never put down anything like the real amount of the outstandings of the estate. Having got the certificate upon a small payment, he proceeded to collect very large amounts of outstandings. Thirdly, the applicant often used to get an order for a certificate and then never pay the duty or take out the certificate, but show the debtor a copy of the order as a proof of the title and collect on the strength of this.

"The first and the third methods of evading the payment of the duty have been easily met by slight alterations of the Act, and we have defined securities so as to cover shares, &c., of various sorts.

"The second has been a great difficulty. It has been found practically impossible to verify or check the statements put in, and the plan has been adopted of allowing the applicant to insert what debts or securities he pleases, and of providing that his certificate shall be of no avail in any way except as regards the particular debts or securities inserted in it.

"Whether this particular plan will yield any practical result in the way of increased payment of duty I have no sufficient data to judge. But I think that on the whole the Act will be productive of some increase of revenue. And the limitations of the effect of the certificates will, I hope, induce many persons to prefer the more costly but more effectual letters of administration, and to pay the duty on the whole estate in consideration of the benefits they will derive and the troubles they will avoid.

"The administration procedure, when questions of title are raised, decides them once for all, whereas the certificate procedure decides nothing except as between the particular debtors and the applicant. The one confers the right to possession of land, the other does not.

"One reason why I have troubled Your Excellency and the Council at this length is because it appears to me of great importance that no reasonable means should be left untried of obtaining in some form or another, from those who are not under the Succession Act, the same succession-duties as are paid by their fellow-subjects so far as is practicable. I do not consider that this result can be obtained except to a very small extent by means of the Certificate Act. A little is better than nothing. But I anticipate a considerable increase from applications under the Probate and Administration Act, and I do marvel, when the Government of India has announced its policy of offering the advantages of the Probate and Administration Act to those who will pay for it, to see the Local Governments year after year steadily declining to empower any Courts in their provinces to grant either probates or letters of administration to Hindus or Muhammadans.

"I also wished to show that there was no hardship in confining the effect of certificates granted to Hindus and Muhammadans to the particular debts mentioned therein, seeing that they were not provided with the same facilities as their brethren of other religions for obtaining grants of administration covering the whole estate. It is not unlikely that means will some day be devised for bringing property held under Mitakshara law within the reach of a succession-duty. I do not think the difficulties will be insuperable."

The Hon'ble MR. HUTCHINS said:—"Sections 7 and 9 have been referred to by my hon'ble friends the mover and Mr. Scoble as laying down certain rules of procedure to guide District Courts in dealing with applications for certificates. Speaking from twenty years' experience of a High Court and District Courts, I feel justified in saying that these rules contain nothing novel.

They simply recognise and sanction the judicial practice which has grown up out of the necessities of the case and from what the best Judges took to have been the intention of the legislature.

" The only new departure is the conversion of a certificate from one of a general character, enabling the holder to collect any debt, into one which will be mere waste paper in respect of any debt not particularly mentioned in the schedule. In my opinion this is the proper principle to adopt. If a man wants to establish his general representative character, he should take out letters of administration; if he merely wants to collect one or more specific debts, let him particularise it or them. I can see no just reason why one class of Her Majesty's subjects should be made to pay succession-duty on the whole inheritance, while another can obtain almost equal advantages without paying anything at all.

" The change, however, is an important one, and it cannot be stated too often or too emphatically ; for until debtors realise it they may be liable to be imposed on. If a debtor chooses to pay without reading the certificate, he may have to pay again. Before, however, this can happen two things must combine—the certificate-holder must turn out not to have been rightly entitled, and the person who is entitled must have some strong reason for electing to sue the innocent debtor rather than his own adversary, who has presumed to collect his money.

" I think it desirable to point out further that the present Bill follows the old law in speaking of the ' effects of a deceased person '. A debt due to an undivided coparcenery will not be affected by any alteration of the law now made."

" I hope, with my hon'ble friend opposite, that the effect of this measure will be to drive most representatives to take out letters of administration. To enable them to do so without difficulty, and to meet what has been said by the Hon'ble Mr. Evans, the Home Department will address the Local Governments, pointing out the necessity of authorising all District Courts, under Act V of 1881, to grant administration."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

PORTS BILL.

The Hon'ble SIR DAVID BARBOUR also moved that the presentation of the Report of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-charges be deferred until the next meeting of the Council.

The Motion was put and agreed to.

SEA CUSTOMS AND TARIFF ACTS AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also moved that the Select Committee on the Bill to amend the Sea Customs Act, 1878, and the Indian Tariff Act, 1882, be instructed to submit their Report at the next meeting of the Council.

The Motion was put and agreed to.

The Council adjourned to Friday, the 15th March, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 13th March, 1889.

PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.—NO. 25 L. D.—14-3-89.—316.—A. E. deS.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Friday, the 15th March, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble R. Steel.

The Hon'ble Sir Dinshaw Manockjee Petit, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble G. H. P. Evans.

The Hon'ble Maung Ôn, C.I.E., A.T.M.

The Hon'ble Muhammad Ali Khan.

The Hon'ble J. W. Quinton, C.S.I.

PORTS BILL.

The Hon'ble SIR DAVID BARBOUR moved that the presentation of the Report of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-charges be further deferred until the next meeting of the Council.

The Motion was put and agreed to.

SEA CUSTOMS AND TARIFF ACTS AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also presented the Report of the Select Committee on the Bill to amend the Sea Customs Act, 1878, and the Indian Tariff Act, 1882.

NORTH-WESTERN PROVINCES AND OUDH KANUNGOS AND PATWARIS BILL.

The Hon'ble MR. QUINTON presented the Report of the Select Committee on the Bill to authorize the imposition of a Patwari-rate in the North-Western Provinces and Oudh and make certain provisions respecting Kanungos and Patwaris in those Provinces.

LOWER BURMA COURTS BILL.

The Hon'ble MR. SCOBLE moved that the Bill to consolidate and amend the law relating to Courts in Lower Burma be referred back to the Select Committee with instructions to submit a further Report at the next Meeting of the Council. He said:—" Since the Report was presented several communications have been received from Burma on the subject of this Bill, and I think it desirable that they should be considered by the Select Committee."

The Motion was put and agreed to.

The Council adjourned to Friday, the 22nd March, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 16th March, 1889.

Government of India Central Printing Office.—No. 50 L. D.—16-3-89.—316.—A. E. deS.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 22nd March, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble R. Steel.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble Maung Ôn, C.I.E., A.T.M.

The Hon'ble Muhammad Ali Khan.

The Hon'ble J. W. Quinton, C.S.I.

PORTS BILL.

The Hon'ble SIR DAVID BARBOUR presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-charges.

SEA CUSTOMS AND TARIFF ACTS AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also moved that the Report of the Select Committee on the Bill to amend the Sea Customs Act, 1878, and the Indian Tariff Act, 1882, be taken into consideration. He said:—

"The Bill is a very short one, and, as it has met with general approval, the alterations which the Select Committee recommend are few and unimportant.

"The proposed amendment of section 110 of the Sea Customs Act, 1878, has been struck out, because it was found that the object with which the amendment was proposed is sufficiently provided for in the existing law.

"The question whether the Indian Tariff Act, 1882, should be amended so as to provide for cases in which a duty was imposed, remitted or altered after a contract for sale was made and before the contract was fulfilled is one that could best be decided according as the weight of commercial opinion was for or against the proposal. Commercial opinion, though not absolutely unanimous, is strongly in favour of the proposed amendment. The provision has therefore been retained in the Bill.

"At the suggestion of the Government of Bombay advantage has been taken of the opportunity to expressly exempt Perim from the operation of the Indian Tariff Act. This makes no change in the existing practice."

The Hon'ble RÁJÁ DURGA CHARN LAHA said:—"The Bill, though a short one, is important. I only wish it had been passed before the raising of the salt-duty last year, which would have saved the country from a loss of several lakhs of rupees. Considering the importance and the urgency of the measure, a Bill of this kind, I submit, might have been passed at one sitting of the Council. Had this been done, the risk of the outside public having an opportunity of taking advantage of the intention of the Government in this matter would have been reduced to a minimum. Then, as regards section 4, it is undoubtedly an equitable addition to the Bill. At any rate it can do no harm to people who might be unwilling to conform to it. They would simply have to contract out of the Bill and would have full liberty to do so."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

LOWER BURMA COURTS BILL.

The Hon'ble MR. SCOBLE presented the further Report of the Select Committee on the Bill to consolidate and amend the law relating to Courts in Lower Burma. He said:—"In deference to the opinion of the local authorities, the Chamber of Commerce, the Trades Association, the Rangoon Bar and

the Recorder, the Select Committee, with the concurrence of the Chief Commissioner of Burma, have so far amended the Bill as to provide that there shall be an appeal from the decision of the Recorder in all cases in which the value is less than Rs. 10,000. The Committee have thought it better to reserve the right to appeal direct to the Privy Council in cases in which the value is more than Rs. 10,000."

The Council adjourned to Wednesday, the 27th March, 1889.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 25th March, 1889.

PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.—NO. 81 L. D.—25-3-89.—316.—A. K. DEB.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Wednesday, the 27th March, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble R. Steel.

The Hon'ble F. M. Halliday.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble G. H. P. Evans.

The Hon'ble Maung Ôn, C.I.E., A.T.M.

The Hon'ble Muhammad Ali Khan.

The Hon'ble J. W. Quinton, C.S.I.

NORTH-WESTERN PROVINCES AND OUDH KANUNGOS AND PATWARIS BILL.

The Hon'ble MR. QUINTON moved that the Report of the Select Committee on the Bill to authorize the imposition of a Patwari-rate in the North-Western Provinces and Oudh and make certain provisions respecting Kanungos and Patwaris in those Provinces be taken into consideration. He said:—

"The alterations made in the Bill by the Select Committee are not numerous. The changes in sections 2, 4 and 9 merely save appointments made and rules issued under existing Acts and set out at length definitions for which the Bill as introduced made necessary a reference to other enactments. We have amended sections 7 and 15 so as to leave it to the Local Government to lay down the rules and conditions under which the patwari-cess is to be computed and payable in the exceptional cases of land being rent-free or rent being payable in kind or service. It would be inexpedient to force landlords or tenants into

court for the purpose of having the liability of tenants determined in such cases. In sections 9, 13 and 15 we have adopted a recommendation of the Local Government and declared under-proprietors of entire villages in Oudh liable to the whole rate and entitled to collect the cess from the tenants. This is in accordance with the practice which prevailed almost universally in the province before the Act of 1882. Under-proprietors of plots of land not being whole villages will be treated as tenants and pay the cess only. We have, as suggested by the Local Government, given landlords in Oudh the same voice in the nomination of patwaris as is possessed under the North-Western Provinces land law by the landlords of those provinces.

"With the assent of my hon'ble friend the Finance Member, we have embodied in section 18 a legislative recognition of the undertaking of the Local Government, that the present contribution to the patwari fund by Government shall not be less than 10 lakhs of rupees, and we have made the concurrence of the Government of India a condition precedent to any reduction of the grant below that amount. When the landlords and tenants of the provinces are being called on to pay their share towards an object in which Government as well as they are interested, it is but fair that Government should pledge itself so far as it properly can to maintain its part of the burden.

"In the general principle of the Bill we have made no change. The Select Committee approached the subject with a strong inclination to modify the provisions of the Bill as introduced in favour of the tenant, but the reasons given by the Lieutenant-Governor in the passage I am about to quote, and the knowledge that the tenants of both provinces had so benefited by an unusually long series of prosperous years as to render the payment of a cess of 1 or $\frac{3}{4}$ per cent. on their rent a matter of no difficulty, constrained the members to the conclusion that the principle of the Bill was sound and should be maintained. Sir Auckland Colvin in his Secretary's letter of the 9th instant, which has been published as a paper on the Bill, writes as follows:—

"To the general principle of the Bill no objections have been made. The justice of re-distributing the present cost of the patwari-establishment among the different classes which profit by its maintenance has not been impugned. It is, in fact, merely a reversion to the original arrangement by which the patwari, as the servant of the village and not of the landlord only, was paid by an allotment from the grain heap before the produce was divided between the landlord and the tenant; with this addition, that the State, which now derives great advantages from the statistical information furnished by the village-papers, and which will be greatly benefited thereby at future periodical revisions of the land-revenue, will

now make a corresponding contribution to the total expense. The importance to the statutory tenant in Oudh, and to the tenant with right of occupancy in the North-Western Provinces, of the punctual and accurate maintenance of the record by which their rights are established is obvious, and to the tenant-at-will the advantage is hardly less, as he depends on the rent-rolls for the correct statement of his rent, and of the continuous holding which, after a period of twelve years, secures him a right of occupancy. The justice of demanding their contribution from the owners of privileged tenures seems too clear to require discussion, and was recognized in the arrangements which existed in the North-Western Provinces prior to the passing of Act XIII of 1882; but, if tenants of all classes are exempted from liability, it is nearly certain that while the privileged tenants, whose annual payments are guaranteed by law, will escape altogether, the tenants-at-will, whose interests in the matter, though considerable, are not so obvious, will nevertheless be compelled by their landlords to pay at least as much as could be demanded from them under the present provisions of the Bill. Experience has shown that it is impossible to hinder the landlord from demanding from tenants-at-will any cess which may have been imposed on the land.' [In this connection I may add that nearly one-half of the tenant cultivation of the North-Western Provinces is in the hands of tenants-at-will, and that a general exemption of tenants from payment of the cess would leave them to bear not only their own share of the cost but probably that of the privileged class of tenants also.] 'Moreover, as a result of recent legislation, nearly the whole of the land in Oudh is held by tenants with statutory rights. The concurrence of the landlords of that province to the proposed taxation has rested mainly on the understanding that they would be allowed to recover from their tenants, who are now in a far better position than they were then, a cess corresponding in principle, though it is considerably less in amount, to the cess which they were allowed to collect before the legislation of 1882. On the general principle, then, that the cost of establishment should be distributed, in proportions roughly corresponding to the benefit they respectively derive from it, between the State, the landlords and the tenantry, Sir Auckland Colvin has no criticism to offer, and he trusts that it may be maintained without any material modification.'

"The Committee considered carefully the possibility of exempting from the cess tenants who might prove that they were paying a share of the cost of the patwari in the shape of enhanced rent; but their enquiries established that no workable plan could be devised which would not be attended with greater evils than those it was meant to provide against. In my remarks on the introduction of the Bill I stated that an enquiry made under the orders of Sir Alfred Lyall in 1884 showed that it was impossible to resolve rents then existing into their component parts so as to say what portion of the rent was to be remitted on account of the abolished cess. As to thirteen districts of the North-Western Provinces, it was then proved that no separate patwari-cess ever existed, or that if it existed it became merged in the rent at a period so remote

that no memory of it survived. In other districts the cess was merged in the rent under the Saharanpur Settlement Rules issued in 1855, or under the Land Act of 1873. What was held on such good grounds to be impossible in 1884 would certainly be equally impossible in 1889, and under such circumstances to give a power of re-opening all cases of enhancement throughout the length and breadth of the provinces for many years previous to 1882, in order to ascertain whether the tenant might now be fairly called on to pay an addition to his rent of two pies in the rupee, is a course which the Select Committee could not recommend. Such a remedy would be worse than the disease.

"These are the only points to which it seems necessary for me to call the attention of the Council on this occasion. My hon'ble friend Sir David Barbour will no doubt explain the relations between this measure and the financial arrangements of the Government of India in the statement which he is, I understand, about to make."

The Hon'ble MUHAMMAD ALI said:—

"Having had occasion to take part in the discussion of the Patwari Bill in the Select Committee, I have nothing more to add. The Bill after amendments is, in my opinion, quite unobjectionable. It is not reasonable that the Government alone should bear the whole cost of the patwari establishment to the extent of thirty lakhs of rupees as it has been doing for the last seven years. As the keeping of an accurate patwari record is proportionately useful to all the parties interested in the land, the cost should be borne by each of them in proportion to the benefit he receives. For this reason the distribution of the cost between the Government, the zamindár and the tenant, as made by the Bill, is just and fair.

"The expenses incurred by the Government on the occasion of every new settlement were not less than, on an average, ten lakhs of rupees in every district, while the present Bill imposes on Government an expenditure of only ten lakhs for both the provinces. In view of the great savings of expense likely to be realised by the Government in future settlements it is only reasonable that the Government should contribute the aforesaid sum. It is a well known fact that people always dislike the imposition of any rate, but when they find that the Government is also ready to contribute its share they will have no fair grounds for complaint."

The Hon'ble SIR CHARLES ELLIOTT said :—" As an old North-West official to whom the patwari and the patwari-cess have been familiar terms for the last thirty years, I cannot let the occasion of the passing of the Patwari-cess Bill go by without expressing my satisfaction at its enactment, and without laying before Your Excellency's Council two special grounds for congratulation. The first is, that this Bill, although it involves the imposition of a cess upon themselves, is about to be passed into law with the approval of the great land-holders of the North-Western Provinces as represented by my hon'ble friend Muhammad Ali, and with the written consent of the influential body of taluqdars of Oudh, who have themselves assisted through the Secretary to the Taluqdars Association in framing the details of the Bill. It shews that a great step has been gained in modifying the hitherto somewhat despotic character of the government of the country, when the Lieutenant-Governor is able to win so completely the confidence of the landed gentry of his province, when they co-operate so heartily with him in legislation of this kind, and when they shew such a wise and statesmanlike patience of taxation.

" The second point I wish to draw attention to is the improvement which this Bill may be expected to produce in the working of the patwari staff. There is nothing so important to the agricultural community of the North-Western Provinces, who comprise about 90 per cent. of the population, as the accurate registration of the mutual rights of landlord and tenant. It is well known that a great reform has taken place of late years in the completeness and accuracy of the village-records—a reform with which the name of Sir Edward Buck is honourably connected. But the basis of this reform rests on the education, discipline, supervision and proper payment of the patwari. As long as the sum which could be devoted to paying the patwari staff depended on the amount which could be spared from the provincial treasury, on which a thousand other demands were being constantly made, so long there was little hope of obtaining such increased grants as were necessary to meet the constantly expanding wants of the establishment. Now that the old system of a cess has been restored, we have got a fund which acts automatically in the right direction. As new land is broken up and cultivated, as fields are subdivided, and competition for land causes rents to rise, the patwari's work of record increases, and with it increases the annual value of the village on which the patwari-cess is based. I trust, therefore, that this Bill, in addition to the relief it gives to the imperial treasury, will have the secondary and, as it were, accidental advantage of strengthening the hands of the Revenue and Agricultural Department, and enabling it to carry out

more completely than before the objects which were defined by the Famine Commission and accepted by the Government of India nearly ten years ago, but which have been to some extent retarded by that eternal want of pence which is the most constant check on all attempted reforms in administration."

The Hon'ble SIR DAVID BARBOUR said :—

"The Bill which we are now considering was introduced mainly, but not solely, with the object of adding to the revenue, and I will therefore take this opportunity of explaining the present state of the finances.

"It will not be necessary for me to go into great detail, as the Financial Statement is published to-day and a copy of it has been furnished to each Member of Your Excellency's Council, but for the purpose of obtaining a correct general view of our present financial position it will be well to go back a little and to briefly indicate the financial position of two years ago, when the Statement for 1887-88 was made.

"Revised Estimates of 1888-89.

"The Estimates of 1887-88 as originally framed in March, 1887, showed a surplus of Rx. 16,700, representing practically a bare equilibrium of Revenue and Expenditure.

"The trifling surplus shown in the Budget Estimate of 1887-88 has proved, on closing the accounts of the year, to have become a deficit of Rx. 2,028,832.

"The deterioration in the financial position which led to this result manifested itself in the course of 1887-88, and steps were taken towards the close of the year to add to the revenue by the imposition of fresh taxation. The measures adopted for this purpose were the following :—

(1) the raising of the rate of the duty on salt from R2 to R2-8 a maund, with effect from the 19th January, 1888, except in Burma, where the rate was raised from 3 annas to R1 a maund;

(2) the imposition of a duty on the import of petroleum with effect from the same date; and

(3) the extension of the Income-tax Act to Lower Burma, from 1888-89.

"These measures were estimated to produce about Rx. 1,900,000; but, as they were introduced in the end of 1887-88, they had but little effect on the Revenue of that year.

"The full effect of the measures just referred to would be felt in 1888-89, and the Budget Estimates of that year, which is now about to close, showed a deficit of only Rx. 698,000 after including in the expenditure of the year a sum of Rx. 1,121,500 for Special Defence Works. If the Expenditure on Special Defence Works had been excluded, the Estimates would have shown a surplus of Rx. 423,500. The financial position has, I regret to say, been again affected injuriously by various influences during the progress of the year. On the expenditure side we have had to allow for a considerable fall in Exchange. In the Estimates the rupee was taken at 1-4·9; the rate actually received has been 1-4·38—a fall of more than a half-penny per rupee, which adds Rx. 684,400 to the expenditure of the year. There has also been unforeseen expenditure, estimated at Rx. 387,500, on Military Expeditions—being Rx. 142,500 on the Black Mountain Expedition and Rx. 210,000 on account of Sikkim, besides Rx. 35,000 on account of the Lushai Expedition. The Revenue Account has been affected by a reduction in the quantity of salt that has paid duty, and there have been short crops in some part of India—a condition which exercises an injurious effect on the revenue generally.

"In face of these adverse circumstances it will be a surprise to most people to learn that, including expenditure on Special Defence Works, we now estimate for a deficit of Rx. 201,700 as against the deficit of Rx. 698,000 which was anticipated in the Financial Statement of March last, and, if the cost of Special Defence Works be excluded, for a surplus of Rx. 616,600 as against the previous estimate of Rx. 423,500. Although the improvement is due in some respects to what may be termed accidental and temporary causes, yet, on the other hand, some of the influences which have adversely affected the finances of the year are of a precisely similar character, and the final result is not unsatisfactory.

"I shall now explain the various causes which have tended to modify the Budget Estimates of 1888-89.

"The Revenue of the current financial year 1888-89 was estimated in March last at Rx. 80,010,500; it is now estimated at Rx. 81,585,500, an improvement of Rx. 1,575,000.

"The Expenditure proper of 1888-89 was estimated at Rx. 81,192,100 and the Provincial adjustment at *minus* Rx. 483,600, giving a total charge against Revenue of Rx. 80,708,500, the deficit being Rx. 698,000. What is meant by a *minus* Provincial adjustment of Rx. 483,600 is that the total Provincial Expenditure of the year was estimated to exceed the total Provincial Revenue

by Rx. 483,600, and this sum was consequently shown as a charge against the accumulated balances of former years, and not against current Provincial Revenue.

"The Expenditure properly so called is now estimated at Rx. 81,584,100, and the Provincial adjustment at *plus* Rx. 203,100, giving a total charge against Revenue of Rx. 81,787,200, being an increase over the former estimate of Rx. 1,078,700. The increase of Revenue over the Estimate has exceeded the increase of Expenditure chargeable against that Revenue by Rx. 496,300, and the estimated deficit has been reduced by that amount and now stands at Rx. 201,700 instead of Rx. 698,000.

"*Revenue of 1888-89.*

"The increase of Revenue for which we have to account is Rx. 1,575,000, and it is due mainly to increases under the following heads :—

	Rx.
Receipts under Exchange	536,800
Railways	243,300
Interest	182,500
Forests	154,100
Land-revenue	111,800
Post Office, Telegraph and Mint	109,100
Opium	107,000
Excise	96,200
Irrigation	80,200
Stamps	77,800
Assessed Taxes	56,800
TOTAL	1,755,600

"The total increase under these heads comes to Rx. 1,755,600, and there are increases under other heads amounting in the aggregate to Rx. 283,200, and making the total increase of Revenue under certain heads no less than Rx. 2,038,800. On the other hand, there is a falling off of Revenue under certain heads amounting to Rx. 463,800; of this sum the falling off under Salt accounts for no less than Rx. 445,600, leaving Rx. 18,200 as the total falling off under the remaining heads. The net increase of Revenue, as already explained, is Rx. 1,575,000.

"In attempting to present an intelligible statement of a subject so extensive and complicated as the financial position of British India, more would be lost

than gained by going into minute details and attempting to explain every petty fluctuation in Revenue and Expenditure due to ordinary causes. I shall, therefore, confine myself to dealing with those variations in Revenue or Expenditure which are due to important or special causes, and which have had a perceptible influence on the financial results of the year.

"The head under which the greatest increase of Revenue is anticipated is Exchange, and the increase is no less than Rx. 536,800.

"The receipts under Exchange arise from the net gain accruing to Government in consequence of certain remittance transactions being carried out by it, under contract or as concessions, at a rate of exchange different from the average rate obtained by the Secretary of State by the sale of bills and telegraphic transfers on India. These receipts occur chiefly in connection with the contracts with Guaranteed and Subsidized Railways, with transactions with Her Majesty's Imperial Government, with family remittances of officers serving in India, and with remittances for the purchase of stores through the Secretary of State for Local Bodies and Native States.

"The very large amounts of revenue accruing in this way in the current and past years have been due almost entirely to the heavy transactions of the Subsidized Railway Companies. Transactions are carried out at contract rates which are more favourable than the market rates, and a gain is made in this way which increases as the market rate falls below the contract rate. Of course, this is not a source of gain to which we can permanently look forward, and we run the risk of loss when the reverse transaction takes place, as well as when the rate of exchange is rising instead of falling.

"The large difference between the Budget and Revised Estimates of the current year under this head is due partly to the fall in the rate of exchange since the Budget Estimate was prepared, but mainly to no provision having been made in the Budget Estimate for the gain, now estimated at Rx. 266,000, accruing from the payments made to the Railway Companies in England, as the question whether this should be treated as current revenue was under the consideration of the Secretary of State at the time the Estimates were prepared, and credit was not taken for it. The gain accrued mainly in connection with transactions relating to the Indian Midland, the Bengal-Nagpur, the Southern Mahratta and the various Guaranteed Railways.

"Increased Railway receipts account for an improvement of Rx. 243,300, and, as the receipts under this head are intimately connected with the expendi-

ture on working expenses and surplus profits of Guaranteed Companies, I propose to deal with both the Revenue and the Expenditure at the same time, thus anticipating to some extent what it would otherwise be necessary to say hereafter. The improvement in Railway Revenue amounts to Rx. 243,300, but there is an increase of Rx. 393,300 in Expenditure (including Exchange), so that the net result in the Railway Account is a deterioration of Rx. 150,000.

"The following are the increases or decreases under the Revenue heads of the Railway Account:—

	Increase + and Decrease – Rx.
State Railways (gross receipts)	–500
Guaranteed Companies (net traffic receipts)	+247,500
Subsidized Companies (repayments of advances of interest)	–3,700
TOTAL	243,300

"The gross earnings of State Railways are almost the same as in the original Estimate, but there are considerable increases and decreases in the case of particular lines.

"The main fluctuations are as follows:—

	Increase. Rx.	Decrease. Rx.
State Railways (gross receipts)—		
East Indian	...	250,000
North-Western	150,000	...
Rajputana-Malwa	95,000	...
Eastern Bengal	70,000	...
Guaranteed Companies (net traffic receipts)—		
Great Indian Peninsula	270,000	...

"The serious falling off on the East Indian Railway is ascribed to a variety of causes, amongst which may be enumerated the cessation of an abnormal traffic in the previous year caused by scarcity in the North-Western Provinces, a continued falling off in the traffic of wheat and grains from Upper India, certain writes-back due to overcharges, and, possibly, a diversion of traffic consequent on the opening of the Indian Midland Railway.

"On the other hand, the grain traffic of the North-Western Railway, which fell off so much in the previous year, has revived to a great extent; the Rajputana-

Malwa and Eastern Bengal Railways have both had prosperous years, the jute season having been extremely favourable for the latter Railway.

"The total increase of expenditure in the Railway Account amounts to Rx. 393,300, which is mainly due to the loss on sterling payments owing to the fall in Exchange.

"The rupee expenditure in India has only increased by Rx. 86,400, and the expenditure in England by only £37,100 (true sterling), but the conversion of the sterling payments on account of interest and annuities (which amount to £5,652,600 (true sterling)) into rupees at a lower rate of exchange than was taken in the Budget Estimate raises the total increase to no less than Rx. 393,300.

"It should also be explained that a more unfavourable exchange adds to the working expenses, under the head of Indian Expenditure, by increasing the rupee price of stores procured from England, though, owing to the system of accounting, this factor does not appear separately in the Accounts.

"It is possible that up to the present this loss by the fall in exchange may have been to a great extent met by a corresponding fall in English prices; but with prices constant it is obvious that an unexpected fluctuation in exchange would have a considerable effect on working expenses.

"The increased receipts under Interest appear in the Home Accounts, and are due to the Secretary of State having, as explained hereafter, raised the loan required for purchase of the Oudh and Rohilkhand Railway earlier than it was actually required. This had the effect of placing a large cash balance at his disposal, most of which he was able to lend out temporarily at interest.

"The increase of Revenue under Forests is Rx. 154,100, but there is an increase of Expenditure on the other side of the Account amounting to Rx. 39,700, and making the net improvement Rx. 114,400. This increase is due mainly to increased receipts in Upper and Lower Burma. The increase in Upper Burma is Rx. 81,500, and includes a payment of Rx. 37,700 by the Bombay-Burma Trading Company on account of previous years. The increase in Lower Burma amounts to Rx. 84,700. The increased expenditure is mainly due to the payment of Rx. 43,400 to the Trading Company just referred to in satisfaction of a claim against the late Government of Upper Burma, and of Rx. 10,000 on account of expenditure incurred by the Company for guards owing to the disturbed state of the country.

"In the Budget Estimate for 1888-89 the total Land-revenue, including the portion due to Irrigation, which is shown in the Estimates under the Irrigation head of account, was estimated at Rx. 23,680,800. The Revised Estimate now shows a net increase of Rx. 111,800.

"Considering the magnitude of the Revenue under this head in the different Provinces, the various items of increase and decrease are of little importance, with the exception of increases of Rx. 103,100 in Bombay, of Rx. 78,500 in Madras and of Rx. 36,200 in Upper Burma, and a decrease of Rx. 71,500 in Lower Burma. The decrease in Lower Burma is due entirely to the postponement of the date of the Land-revenue demand in two districts, which transfers Rx. 87,000 from 1888-89 to 1889-90. The increase in Bombay is stated to be due to prompt realisation of the demand; that in Madras is due to land newly brought under cultivation having raised the demand of the year and to expected advance collections, and in Upper Burma to growing receipts in that Province as order is established. The decrease in Bengal and the North-Western Provinces reflects the influence of an unfavourable season and poor crops in some places.

"The increase of Revenue under the group which comprises Post Office, Telegraph and Mint is made up as follows:—

	Rx.
Post Office	49,800
Telegraph	33,400
Mint	25,900
TOTAL	109,100

"The increased revenue of the Post Office is due to the steady growth of the Department; the receipts of the Telegraph Department have increased from a similar cause and from the extension of private lines; while the increased revenue of the Mint is due to a larger amount of copper coin passing into circulation than was taken credit for in the Estimates.

"The increase of Rx. 107,000 in receipts from Opium is entirely due to the rise in the price of the Bengal drug. The increased revenue from this source alone has been Rx. 444,600, against which has to be set a reduction of Rx. 333,000 in duty on exports of Malwa Opium and a small falling off of Rx. 4,600 under other heads. The average price of Bengal Opium has been R1,120 a chest, as against an estimate of R1,042. In the Budget Estimate it

was anticipated that duty would be paid on 35,350 chests of Malwa Opium. It is now expected that duty will be paid on only 30,300 chests. The rise in the price of the Bengal drug, and the reduced exports of Malwa, appear to have been due to short crops both in China and Malwa.

"The increase of Rx. 56,800 in Assessed Taxes is mainly due to the following changes: In the "India" Account an increase of Rx. 23,100 chiefly in interest on Government securities; in Bengal Rx. 5,000 due to revision of assessments and realization of arrears; in Madras Rx. 10,000 from revision of assessments, and in Bombay Rx. 9,200.

"The year 1887-88 was the second in which the Income-tax of 1886 was in operation, and it may be of interest if I state here that the smoother working of the administrative machinery is indicated by the reduction in the number of objections from 100,428 to 72,571, in the amount refunded from Rx. 27,067 to Rx. 19,949, and in the cost of collection from Rx 50,157 to Rx. 28,679. The net collections amounted to Rx. 1,382,808, and exceeded those of the previous year by Rx. 105,297.

"The estimated falling off in the Salt-revenue is Rx. 445,600, and it is due to a reduction in the quantity of salt on which duty was paid. The question of the causes which have brought about this reduction is of importance, because it has followed the increase of duty which took place towards the close of last year. I shall deal specially with this matter hereafter. Further details of the less important variations in the revenue of the year will be found in the Financial Statement and I need not repeat them here.

"*Expenditure of 1888-89.*

"Turning to the Expenditure side of the Account, we find a total increase in Expenditure proper of Rx. 392,000, as well as an alteration in the Provincial adjustment of Rx. 686,700, the result appearing as an increase on the whole Account of Rx. 1,078,700.

"It will be convenient, in the first place, to divide the total increase of Expenditure into its three component parts of (1) rupee expenditure in India, (2) sterling expenditure in England, and (3) exchange.

"In the Indian or rupee expenditure there has been an increase of Rx. 208,800 in Imperial expenditure and a reduction of Rx. 254,400 in Provincial expenditure. In the English or sterling expenditure there is a decrease

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of £168,400 (true sterling), and, notwithstanding this reduction in the gold payments, an increased charge on account of Exchange of no less than Rx. 606,000. If the sterling expenditure had equalled the Estimate, the increased charge for Exchange would have been Rx. 684,400. This increased charge on account of Exchange is due of course to the Budget Estimates having been calculated in March last at an exchange of 1*s.* 4·9*d.* per rupee, while in the Revised Estimate we have only been able to take 1*s.* 4·38*d.*

"The principal heads under which increases of expenditure have occurred are the following :—

	Increase. Rx.
Army	402,500
Railway Revenue Account	393,300
Interest on debt	189,100
Opium	93,800
Superannuation Allowances and Pensions	88,800
Political	51,800
Irrigation	48,500
Forests	39,700
TOTAL	1,307,500

"The aggregate increase under these heads comes to Rx. 1,307,500. Minor increases under other heads come to Rx. 166,700, making a total increase of Rx. 1,474,200. Against this figure must be set decreases amounting to Rx. 1,082,200, of which the following are the most important :—

	Decrease. Rx.
Special Defence Works	303,200
Civil Works	221,600
Land-revenue	145,200
Stationery and Printing	71,000
TOTAL	741,000

"The explanations of the increased expenditure under the Railway Revenue Account and Forests have already been given.

"The increased cost under Army is accounted for by an increase of Rx. 210,000 in India, of £16,000 (true sterling) in England, and of Rx. 176,500 for Exchange. The increase in India is due to the Sikkim, Black Mountain

and Lushai Expeditions already mentioned, to the rupee payments to British troops having been increased by the fall in the rate of exchange, and to the introduction of the practice of fixing the rate of exchange for the issue of pay to British troops serving in India for the half-year only, instead of for the whole year, and to higher expenditure on account of dearness of provisions and forage (including compensation paid to Native troops on this account). These increases were balanced to some extent by considerable savings in Military expenditure in Burma.

"The increased charge of Rx. 189,100 on account of Interest on debt is made up of an increase of £68,100 (true sterling) in England, and a decrease of Rx. 27,400 in India, *plus* an increase of the charge for Exchange amounting to Rx. 148,400. The increase in the English sterling payment is due to the loan for the purchase of the Oudh and Rohilkhand Railway having been raised before it was actually required. There is a corresponding receipt owing to the Secretary of State having been able to lend a portion of his surplus balance.

"The increase in the charge for Opium is due to a larger crop than was anticipated, and the increase under Superannuation Allowances and Pensions of Rx. 88,800 is due, to the extent of Rx. 72,800, simply to the increased exchange on the sterling payments made in England.

"The increased Political charge of Rx. 51,800 is chiefly due to the payment of arrears of the subsidy of the Amir of Afghanistan, as well as to an advance payment on the same account of Rx. 20,000.

"The increase in expenditure under Irrigation is the net result of a great many variations, amongst which may be mentioned a heavy increase in the Punjab (Rx. 26,300) to repair damages by flood, and the classification of the Khushdil Khan Reservoir (Rx. 26,124) in Biluchistan as a work to be constructed from Revenues instead of from Loan Funds, as was originally intended.

"The decrease of Rx. 303,200 in the estimated expenditure on Special Defence Works is mainly due to a decrease in the estimated expenditure in England of £186,300 (true sterling) caused by the fact that payments for heavy guns for arming the Indian defences were not made as rapidly as was expected.

"The decrease in the expenditure on collection of Land-revenue is distributed over the several Provinces.

"The alteration in the Provincial adjustment arises in the following manner :—

"The original Estimate of Provincial Revenue was Rx. 21,668,100, and of Expenditure Rx. 22,151,700, giving a Provincial deficit of Rx. 483,600, which represents the Provincial adjustment of the Budget Estimate of 1888-89.

"The Provincial Revenue of the year is now taken at Rx. 22,100,400, and the Provincial Expenditure at Rx. 21,897,300, giving a surplus on Provincial Account of Rx. 203,100, which represents the Provincial adjustment of the Revised Estimate. As already stated, the net result of the transactions of the whole year is that the deficit of Rx. 698,000 estimated exactly a year ago now promises to be reduced to a deficit of Rx. 201,700.

"Estimates of 1889-90.

"The financial problems and difficulties of 1888-89 will soon be a matter of history. The all-important question of to-day is the financial position of the coming year.

"The Revenue of the coming year 1889-90 is estimated at Rx. 82,935,300, and the total Expenditure at Rx. 83,469,800.

"The Provincial adjustment for the year is estimated at *minus* Rx. 640,800, and consequently the expenditure chargeable against the Revenue of the year is Rx. 82,829,000 and the estimated surplus is Rx. 106,300. This surplus is obtained after including in the expenditure of the year a sum o Rx. 1,102,900 on account of the cost of Special Defence Works. Exchange has been taken at 1*s.* 4·38*d.*=1 rupee.

"A comparison of the Budget Estimates of 1889-90 under the different heads with the Budget Estimates of 1888-89 will show the progress of Revenue and Expenditure during the year which is now drawing to a close.

"Before, however, proceeding with this comparison, it is necessary to give some explanation of a special arrangement which has had a considerable influence on the Estimates of the coming year. It was explained in the Financial Statement for 1887-88 that the Provincial Contracts had been renewed with Local Governments for a further period of five years from 1st April, 1887. The average annual gain to Imperial Revenues during the period of revision was stated to be Rx. 550,000, in addition to which a greater share in the improvement of the revenue was secured under the new arrangements. I have already explained that the continued fall in exchange and other causes compelled the Government to

raise the duty on salt and to impose a tax on imported petroleum. The Secretary of State, in sanctioning this additional taxation, examined and reviewed the financial relations between the Imperial and Provincial Governments, and pointed out the inequality of the existing arrangements which secure freedom from financial difficulties to Local Governments while the Supreme Government may be passing through a phase of acute embarrassment. The Government of India was requested to reconsider the propriety of arrangements which protected Local Governments from sharing in the financial responsibilities of the Empire, and from contributing to their relief.

"Proposals for an alteration in the financial relations between the Supreme and Local Governments, which virtually had the effect of terminating the Provincial Contracts of 1887-88, were made on 2nd October last. These proposals met with much opposition, and it was decided to postpone decision on the questions involved. It was, however, settled as a temporary expedient that each Local Government, except the Punjab, should make a contribution in aid of Imperial Revenues in 1889-90. The total of this contribution is Rx. 740,000, and, with scarcely an exception, Provincial resources are so ample that the contribution has been made without seriously affecting the financial position of any of the Local Governments.

"The contributions made by the several Local Governments are as follows :—

	Rx.
Central Provinces	30,000
Burma	50,000
Assam	10,000
Bengal	100,000
North-Western Provinces	200,000
Madras	175,000
Bombay	175,000
TOTAL	740,000

"In the case of the North-Western Provinces and Oudh and Lower Burma the contributions will be permanent. In the former case the Local Government will be reimbursed its contribution by receiving the proceeds of the Patwari-cess now about to be re-imposed; in the case of Lower Burma the financial position of the Province has so far improved in recent years that a special annual grant of Rx. 47,900, made to it in 1887-88, has been simply resumed.

"The important and difficult question of the nature of the future financial relations between the Supreme and Local Governments remains for future consideration.

"*Revenue of 1889-90.*

"The Revenue of the year 1888-89 was estimated in March last at Rx. 80,010,500, and the Revenue of 1889-90 is now estimated at Rx. 82,935,300. The increase is Rx. 2,924,800.

"The following are the principal heads under which the increase occurs :—

	Increase.
	Rx.
Railway Account	1,501,800
Land-revenue	301,200
Provincial Rates	244,700
Post Office, Telegraph and Mint	197,400
Irrigation	130,600
Excise	117,800
Receipts under Exchange	112,300
Stamps	105,100
Forest	98,000
Assessed Taxes	63,500
Customs	49,300
TOTAL	2,921,700

"The total increase under the heads just specified comes to Rx. 2,921,700, leaving a balance of Rx. 3,100 unaccounted for, which is the net result of variations under other heads of which the most important are a decrease of Rx. 193,900 under Opium, and of Rx. 92,600 under Salt.

"In the Budget Estimate of 1888-89 the receipts from Railways were estimated at Rx. 15,184,700. For 1889-90 they are estimated at Rx. 16,686,500, giving the increase of Rx. 1,501,800. If we consider the expenditure side of the Account, however, we find that the estimated expenditure of Rx. 17,299,600 in 1888-89 has risen to Rx. 18,713,100 in 1889-90, showing an increase of Rx. 1,413,500; the net improvement in the Railway Revenue Account is, therefore, only Rx. 88,300.

"The variations in receipts of the Railway Account fall under the following heads:—

	Increase + Decrease − Rx.
State Railways (gross receipts)	+1,362,600
Guaranteed Companies (net traffic receipts)	+155,000
Subsidized Companies (repayment of advances of interest)	−15,800
TOTAL	Rx. 1,501,800

"The increased receipts of State Railways shown in the above figures are not altogether real, as they are exaggerated by the transfer of the Oudh and Rohilkhand Railway to this head from that of Guaranteed Railways. The line was purchased by the State on 1st January, 1889, so that the transactions relating to it, which were entered in the Budget of 1888-89 for nine months under Guaranteed Railways and for three months under State Railways, now appear in the Budget for 1889-90 wholly in the latter category.

"The principal increases and decreases of receipts occur in connection with the following lines:—

STATE.	Increase + Decrease − Rx.
East Indian Railway	−240,000
Rajputana-Malwa	+100,000
Bengal-Nagpur	+95,000
Tounghoo-Mandalay	+85,000
Eastern Bengal System	+90,000
Oudh and Rohilkhand	+550,000
Indian Midland	+400,000
North-Western Railway	+200,000
Mysore Railway	+54,600
TOTAL	1,334,600

GUARANTEED.	(Net Receipts.) Rx.
Madras	20,000
South Indian	40,000
Bombay-Baroda	15,000
Great Indian Peninsula	310,000
Oudh and Rohilkhand	−230,000
TOTAL	+155,000

"The cause of the increase and decrease in the case of the Oudh and Rohilkhand line has been explained. In the case of the Indian Midland, Bengal-Nagpur, Tounghoo-Mandalay and Mysore Railways it is due to the opening of additional lengths of line.

"On the remaining lines noticed, the estimate has been fixed principally on a consideration of the current year's results. The very serious falling off on the East Indian Railway has been explained in dealing with the Revised Estimate. The opening of the Indian Midland will probably still further affect the receipts, but to what extent it is impossible to foretell.

"The falling off is fortunately more than covered by the increase on the Great Indian Peninsula line. The estimated gross receipts of this line show an anticipated increase of Rx. 400,000 over the Budget of the year about to close; the estimate is based on the traffic of the past twelve months, which has shown a steady improvement, likely not only to be maintained but to be still further augmented by the opening of the Indian Midland and Bengal-Nagpur Railways. The opening of the Indian Midland may, on the other hand, tend to reduce the earnings of the Rajputana-Malwa and Bombay-Baroda lines, so that there is considerable uncertainty in framing the Estimates this year of individual lines: taken as a whole, the estimate is likely to prove a fairly correct one.

"Turning to the Expenditure side of the Railway Account, it will be found that there has been an increase of Rx. 1,177,900 in the Indian or rupee portion of the transactions, a decrease of £11,600 (true sterling) in the English expenditure, and an increased charge of Rx. 247,200 on account of exchange.

"The increase in working expenses of State Railways is mainly due to the Oudh and Rohilkhand Railway being treated as a State line for the whole year, to the opening out of new lines, and to increase of traffic on lines already open.

"An item appears for the first time in the Estimates, namely, 'Interest chargeable against Companies for advances of Capital.' It represents interest on moneys raised directly by the Secretary of State, under the provisions of the Oudh and Rohilkhand Railway Purchase Act, to meet expenditure incurred by Companies in preference to allowing Companies to borrow themselves. It is found that Capital can be raised on more favourable terms in this way.

"The increase in the charge against Revenue for Exchange is wholly due to the fall in value of the rupee, the estimated sterling expenditure, other than on

account of Revenue stores, being actually less than in the current year; in addition to the amount shown on this account, a large sum, representing a further loss, is concealed in the working expenses, as I have already explained.

"Considering the very heavy increased burdens on account of the fall in exchange, and bearing also in mind the fact that in recent years a very large amount of Capital has been expended on lines for the defence of the Frontier, which cannot be expected to prove fully remunerative, a net improvement, though only of Rx. 88,300, cannot be considered unsatisfactory.

"The rapidity with which the construction of Railways has been pushed on and the fall in exchange have had an injurious influence on the net results of the Railway Revenue Account in recent years.

"The net loss on the Railway Account has increased from Rx. 1,044,203 in 1880-81 to Rx. 2,026,600 in the Estimates of 1889-90.

"Between March, 1880, and March, 1889, the number of miles of Railway open for traffic has increased from 8,382 to 13,671, or by more than 63 per cent.

"The average yearly expenditure of capital on Railways for the interest on which Government is directly or indirectly responsible has been Rx. 7,197,000.

"Land-revenue (including the portion due to Irrigation) is estimated to increase by Rx. 340,300, distributed over the several Provinces.

"Provincial rates are estimated to increase by Rx. 244,700, due mainly to the receipts expected from the re-imposition of the Patwari-cess. The Revenue classed under this head is appropriated to local purposes and shown in the Local column in the Estimates.

"The receipts under Irrigation are expected to increase by Rx. 1,30,600, but there is an increased charge of Rx. 32,400, giving a net improvement of Rx. 98,200.

"The increase in Revenue is due to increase of direct receipts from Irrigation in the North-Western Provinces and the Punjab, and to an increase in the Land-revenue due to Irrigation in Madras and Bombay. The increased expenditure is chiefly due to increase in the charge for interest owing to additional capital expenditure.

"Post Office, Telegraph and Mint.—The net account of these Departments is expected to improve as follows :—

	Improvement. Rx.
Post Office	+ 63,300
Telegraph	+ 26,400
Mint	+ 21,600
TOTAL	+111,300

"The improvement in the case of the Post Office is due to steady progress of the Department. The figures just given do not profess to be the result of a strict Profit and Loss Account of the working of the Departments concerned. They represent merely the difference between the Revenue and Expenditure as recorded in the Accounts and Estimates, but they are sufficient for the purpose of indicating the financial progress of the Departments.

"The increase of Rx. 117,800 in the case of Excise and of Rx. 105,100 in the case of Stamps is generally distributed over the several Provinces with the exception of Bengal, where a decrease of Rx. 50,000 in Excise-revenue is anticipated on the ground that the unfavourable crops and the changes which are being introduced in the management of the Excise may have an unfavourable effect on the Revenue for a time.

"The increase in Customs (Rx. 49,300) is mainly due to large exports of rice anticipated from Burma in 1889-90.

"The Petroleum-tax when it was first imposed was expected to give a Revenue of Rx. 100,000 on a total import of 32,000,000 gallons. It is expected to give in the current year a Revenue of Rx. 115,000 on an import of 38,000,000 gallons; and for 1889-90 it is expected to give Rx. 120,000.

"I have already explained the nature of the Receipts under Exchange. In the Budget Estimate of 1888-89 these Receipts were estimated at Rx. 415,000; in the Revised Estimate for that year the figure has been raised to Rx. 951,800, due largely to the addition of a credit, now estimated at Rx. 266,000, which was not included in the original Estimate owing to a difference of opinion as to the proper method of dealing with it in the Accounts. The estimate of these receipts in 1889-90 is Rx. 527,300. The large decrease as compared with the Revised Estimate is due to reduced capital expenditure on some of the Subsidized Railways now approaching completion.

"In the case of Forests the improvement expected in Revenue is Rx. 98,000, against which must be set an increase of expenditure amounting to Rx. 30,700, giving a net improvement of Rx. 67,300. This improvement is due to increased Revenue in Upper and Lower Burma.

"Under Assessed Taxes the increase of Revenue is expected to be Rx. 63,500. The expectation of an increase is based on the results of the current year.

"The decrease of Rx. 193,900 under Opium is due to an increase of Rx. 159,600 under Bengal opium, the selling price having been taken at R1,070 instead of R1,042 as in the current year's Estimates, and to a decrease of Rx. 347,000 under Malwa Opium, owing to an expected reduction in the number of chests exported from 35,350 to 30,000.

"For Salt we have taken a moderate estimate of Rx. 8,029,900, which is Rx. 353,000 more than the Revised Estimate and Rx. 92,600 less than the Budget Estimate for the current year. A large increase over the receipts of the current year is expected, as the falling off this year is mainly due to unfounded rumours of an immediate reduction of the duty.

"This concludes what I have to say on the Estimates of Revenue for 1889-90, and I now turn to the question of Expenditure.

"*Expenditure of 1889-90.*

"The Expenditure of 1889-90 is estimated at Rx. 83,469,800 as compared with an estimated expenditure of Rx. 81,192,100 for 1888-89, showing an increase of Rx. 2,277,700.

"The Provincial Adjustment is *minus* Rx. 640,800 as against an adjustment of *minus* Rx. 483,600 in the Estimates of 1888-89.

"The increase of Rx. 2,277,700 is made up of an increase of Rx. 1,651,500 in the rupee portion of the Account, of a decrease of £39,700 (true sterling) in the Home Account, and of an increase of Rx. 665,900 in Exchange. The increase in Exchange of Rx. 665,900 is almost entirely due to the fall in the value of the rupee; the alteration in the rate of exchange for converting the pay of the British troops, which is fixed in gold but payable in rupees, adds an additional charge to the Military expenditure of about Rx. 195,000, so that the additional expenditure for which the Government of India has to provide

has been increased in one year by Rx. 860,900 on account of the fall in Exchange, excluding the effect which the fall in exchange may have had on the rupee cost of stores.

"It will facilitate explanation of the various increases or decreases if the heads of expenditure are dealt with in the first instance according to the grouping which is generally adopted in the Accounts.

"The figures I am about to quote show the groups under which (I) increases and (II) decreases have occurred :—

I.	Expenditure Increased.
	Rx.
Railway Revenue Account	1,413,500
Army	1,005,700
Salaries and Expenses of Civil Departments	192,900
Post Office, Telegraph and Mint	86,100
Irrigation	32,400
Famine Relief and Insurance	27,300
TOTAL	2,757,900

II.	Expenditure Decreased.
	Rx.
Interest	149,800
Direct Demands on the Revenue	133,000
Buildings and Roads	110,500
Miscellaneous Civil Charges	34,700
Construction of Railways (charged against Revenue)	33,600
Special Defence Works	18,600
TOTAL	480,200

"The aggregate of increases is Rx. 2,757,900 and of decreases Rx. 480,200, giving a net increase of Rx. 2,277,700.

"The causes of the increase under Railway Revenue Account, Post Office, Telegraph and Mint, and Irrigation have already been explained.

"By far the most important of the other increases is that under Army. The total increase of Rx. 1,005,700 is made up of an increase in rupee expenditure of Rx. 477,000, in English expenditure of £245,500 (true sterling), and

of Rx. 283,200 under Exchange. The increased charge for Exchange is chiefly due to the fall in the value of the rupee, and the increases of which special explanation is necessary are an increase in the Indian Estimates of Rx. 477,000, and an increase in the English Estimates of £245,500 (true sterling).

"Taking the latter item first it may be said with practical accuracy that the increase in the Home Expenditure is due to provision made for the purchase of magazine rifles and 12-pounder breech-loading guns. However much the Government of India may regret that it should be necessary to incur such expenditure, it is not possible to avoid it without placing the Indian Army in a position of inferiority as compared with that of other countries. The cost of these rifles and guns accounts for £206,000 (true sterling) of the Home expenditure.

"As regards the increased cost of the Army in India, it will be obvious that the increase to the number of troops, European and Native, must give rise to petty increases in the various Departments that deal with them, and minor reforms account in the aggregate for a perceptible amount of increase. But the greater portion of the increase is due to special measures, of which the most important are the following:—

	Rx.
Provision for rapid mobilisation of an Army Corps in case of necessity	203,500
Exchange on pay of British Troops	195,000
Provision on account of Troops in Sikkim	100,000
Ditto ditto Lushai Country . .	10,000
Increased cost of provisions, including compensation for dearness of provisions and forage	79,500

"The total comes to Rx. 588,000, but there is a saving of Rx. 220,000 in the extra cost of troops in Burma, so that the additional cost is reduced to Rx. 368,000. The difference of Rx. 109,000 between this figure and the total increase in India of Rx. 477,000 is due to the minor elements of increase to which I have just referred, balanced to some extent by savings under other heads.

"The sum of Rx. 203,500 on account of mobilisation is intended to meet the cost of purchasing transport animals, provisions and equipments, so that in case of need an Army Corps may be in a position to take the field promptly. This is one of these precautions which in the present days of scientific warfare

cannot safely be neglected. The greater portion of the cost will be incurred once for all, and will not recur. The pay of the British troops is fixed in sterling, and as the Exchange falls the number of rupees which they are entitled to receive increases. In the Estimate of 1888-89 the rate was taken at 1*s.* 5½*d.*; it has now been fixed at a much lower rate, and the change has added Rx. 195,000 to the estimate of expenditure for 1889-90. We have hopes that this charge may be somewhat reduced, but in the meantime it has been thought necessary to provide the full sum in the estimates.

"The increased expenditure on Salaries and Expenses of Civil Departments is mainly due to the entertainment of additional Police. The increase of expenditure on Police is Rx. 168,800, and of this Rx. 125,600 is on account of Police in Upper Burma. There is also an increase of Rx. 45,200 in Bengal, due to Government undertaking to bear the whole cost of the Police of the presidency-town. There is some increase in Madras, due to a provision for giving a special allowance to officers in charge of police-stations.

"The decrease of Rx. 149,800 under Interest is made up of a decrease of Rx. 21,300 in the rupee portion of the Account, of a decrease of £167,400 (true sterling) in the English Account, and an increase of Rx. 38,900 in the charge for Exchange.

"The decrease in England in 1889-90 is accounted for by the conversion of £53,262,000 of 4 per cent. stock into 3½ per cent. stock, which reduces the yearly interest charge by £266,300. The increase in Exchange requires no explanation.

"The decrease under 'Direct Demands on the Revenues' is Rx. 133,000. It occurs under Opium cultivation and manufacture (Rx. 190,400), Collection of Land-revenue (Rx. 55,000), and Stamps (Rx. 40,700). The other heads in this group, except Customs, show increases. The expenditure on Opium cultivation and manufacture is determined by the amount of crude opium produced. The area under cultivation in the present season is 14 per cent. less than last year, and the produce is estimated at 15 per cent. less. Our reserve is unusually large and is expected to stand at 49,705 chests at the end of 1889. With a reserve of this magnitude it is obviously desirable to temporarily contract production, and this policy has been adopted in making the engagements for the present season.

"The reduction under Buildings and Roads of Rx. 110,500 is due to a reduction of Rx. 110,600 in Civil Works. Of the decrease under Civil Works,

Rx. 96,200 is in Imperial expenditure, and is owing to the completion of the bulk of the Frontier Roads and other Imperial works. On the other hand, a large Imperial grant (Rx. 298,100) is still being made for Civil Buildings and Roads in Upper Burma.

"The reduction in Miscellaneous Civil Charges is the net result of a number of increases and decreases, of which the most important are an increase of Rx. 118,000 on account of Superannuation Allowances and Pensions, and decreases of Rx. 47,500, Rx. 81,000 and Rx. 40,000 under Territorial and Political Pensions, Stationery and Printing, and Miscellaneous.

"The increase in Superannuation Allowances is very largely due to the increase of Exchange on sterling pensions, the decrease in Political Pensions to the death of the ex-King of Oudh, and the decrease under Stationery and Printing to a reduced demand for stores from England.

"In the Budget Estimates of 1888-89 Provincial Revenues were estimated to yield Rx. 21,663,100, and Provincial Expenditure was taken at Rx. 22,151,700, the Provincial Adjustment being *minus* Rx. 483,600.

"In the Estimate for 1889-90 Provincial Revenues are taken at Rx. 21,781,300, and Provincial Expenditure at Rx. 22,422,100, and the Provincial Adjustment is *minus* Rx. 640,800.

"General Financial Position.

"Having now explained the Estimates of Revenue and Expenditure for 1889-90, I propose to make a few remarks on the general financial position and the prospects of the future. The special difficulties with which Indian finance has to contend are, War, Famine, the fall in Exchange and the reduction of the Revenue from Opium. On the question of War I can say little; petty frontier wars are almost certain to occur at intervals, but their cost is not such as to seriously embarrass the finances. I am not aware of any reasons for thinking that War on a large scale is likely to occur in the immediate future, but expenditure must be incurred as an insurance against national danger. The country has happily escaped Famine for a decade, but we have no ground for assuming that the climatic conditions of the Indian continent have changed and that there will never be drought sufficient to produce famine.

"Regarding the future of Exchange, it is impossible to give a confident opinion. Before the year 1873 gold and silver were never used as legal standards without the regulating influence of a system of double legal tender, and

there is consequently no experience in the past to which we can appeal in forming our opinion as to the probable course of events in the future. The sanguine declare the rupee will soon be worth two shillings; the despondent anticipate a further fall of undefined magnitude.

"I cannot pretend to arbitrate between these conflicting views. But during the last fifteen years the great falls in the value of the rupee have coincided to an extent, which can hardly be the result of accident, with corresponding falls in the gold prices of commodities. If this law should hold good in the future, the gold value of the rupee will not again fall largely and suddenly unless the gold prices of commodities fall.

"I will venture to depart so far from the safe attitude of reserve as to say that, if there is another heavy fall in gold prices, it will probably be accompanied by another heavy fall in the gold price of silver. At present gold prices have ceased to fall, and there is even a slight tendency to a rise.

"It is needless to say that the question of the future relations between the gold and silver standards is one of great importance for India. The present condition is not one of permanent equilibrium. Either there will be continuous progress in the direction of demonetising silver and substituting gold, or the world will revert to the old system of double legal tender. In the former case our financial difficulties will probably be greater in the future than they have been in the past, and it is impossible to forecast the ultimate result; in the latter case we may have to pass through a severe convulsion caused by foreign nations attempting to restore the old ratio of 1 to 15½ between gold and silver. If we are unable to join with them in attempting to settle the question by international agreement, we cannot expect them to consider our interests in any course which they may think fit to adopt.

"In the interests of India a sudden reversion to the old ratio of 1 to 15½ brought about by the action of foreign countries, and the continuous and progressive demonetisation of silver, accompanied with a fall in the value of the rupee to an unknown and unlimited extent, are alike to be deprecated. Yet, if the question is not dealt with by international agreement, we must accept the risks and inconveniences of either the one result or the other, unless we are prepared to choose the heroic and hazardous remedy of adopting a gold standard. Nor is it possible for us to conjecture at what time the action of the United States and the continental nations of Europe may bring on a crisis either of the one kind or the other.

"For these reasons it is of paramount importance to India that an attempt to settle the question by international agreement should be made. No other course affords a prospect of a safe solution to be gradually carried out with the minimum of disturbance to existing interests. It is to be hoped that, if any prospect of a settlement appears, India shall not be required to subordinate her interests to the needs, or supposed needs, of countries which may desire to maintain the single gold standard.

"The future of the Opium-revenue is surrounded with almost as much uncertainty as the question of Exchange. There has been, during the current financial year, a considerable rise in the price of the Bengal drug, but that rise appears to have been due, in a very large degree, to poor crops in Malwa and China, and has been accompanied with a large falling off in the exports of Malwa Opium.

"Already the price of Bengal Opium has fallen from its highest figure of R1,244 a chest in November to R1,126 a chest at the sales of the present month.

"The dangers I have just indicated are of a general nature. We must also anticipate some falling off in revenue in the immediate future from two special causes. As I have explained elsewhere, we expect to receive in the coming year a contribution of Rx. 740,000 from Local Governments. Of this amount Rx. 250,000 is permanent, being made up of Rx. 200,000 from the Patwari-cess and about Rx. 50,000 from Lower Burma. The balance of Rx. 490,000 we receive for a single year only, and, unless other arrangements can be made, we must be prepared to accept a reduction of Rx. 490,000 in the Estimates of 1890-91. There is also a credit of Rx. 527,300 arising from receipts on account of exchange on the capital transactions of Railway Companies. This credit must soon disappear with a corresponding reduction in revenue. It may then be said that temporary causes give us an additional revenue of Rx. 1,017,300 in 1889-90, which is not permanent, and which will be largely reduced in future years and will ultimately disappear altogether.

"But I should give a very erroneous opinion of our position if I were to dwell only on the difficulties and dangers of the future. There are hopeful as well as discouraging elements, and I may say at once that in my judgment there are no grounds for a despairing or pessimist view of Indian finance. If we could get rid of the exchange difficulty, I should be prepared to adopt a hopeful

view of the future, and, if there were in addition no risk of a great war, I should look forward to our progress in coming years with as much confidence as it is ever safe to feel in financial matters.

"Among the more encouraging features in Indian finance is the elasticity of the ordinary revenue. It is true that we have not many new sources of revenue open to us, but the receipts from existing sources grow with satisfactory rapidity. The figures which I have given in comparing the Budget Estimates of 1888-89 with the Budget Estimates of 1889-90 have made this point sufficiently clear, and I need not add anything more on the subject.

"In Upper Burma, too, we appear to have turned the corner and may now look forward to steady reduction of the net charge which that Province imposes on the finances.

"The account for Upper Burma in the Estimates of 1888-89 showed a net charge of Rx. 1,875,000.

"In the Estimates of 1889-90 the net charge is Rx. 1,625,300, a reduction of Rx. 249,700.

"A net improvement of Rx. 249,700 in a single year is an encouraging symptom, especially as there is every ground for supposing that the improvement will continue. The improvement is really greater by Rx. 77,800, as the account now presented includes a net charge of Rx. 77,800 on account of railways, which does not appear in the Estimates of 1888-89.

"It should also be recollected that in recent years we have had to bear the burden of a considerable increase to the Native and European Army. That increase has been completed and its cost provided for, with the exception of the expenditure on the Reserve for the Native Army, which will not be great.

"Heavy expenditure has also been incurred on Frontier Railways. The total estimated cost of these Railways is Rx. 13,410,700, of which Rx. 10,083,300 will have been met at the end of this month, and Rx. 1,191,800 is provided for in the Estimates of 1889-90, leaving only Rx. 2,135,600 for future years.

"We have also been carrying out an extensive scheme of Coast and Frontier Defences, estimated to cost Rx. 5,449,515 (which is charged against Revenue), of which Rx. 1,850,768 will have been expended by the end of this year, and

Rx. 1,102,900 is provided for in the Estimates of the coming year, leaving Rx. 2,495,847 to be incurred in subsequent years. There are also special charges in the Estimates for next year of Rx. 314,500 for the Sikkim and Lushai Expeditions, and for thoroughly equipping at least one army corps with transport, and of Rx. 301,800 on account of magazine rifles and 12-pounder breech-loading guns. The former charge will not recur, and, though considerable expenditure may be necessary for a time on account of rifles and guns, the charge is not a permanent one.

"It would be rash to assume that we are able to foresee the end of all special military expenditure. In such matters there is no finality; new dangers may arise involving further preparations and additional expenditure, but the figures I have given are sufficient to show that the sacrifices which the country has been called on to make in recent years have not been in vain; that the original programme of military defences is approaching completion, and that there is at least some prospect of an alleviation of existing burdens.

"The improvement of means of communication by the opening out of Railways is exercising a marked beneficial influence on the country, and India is entering on what I hope may prove to be but the beginning of a prosperous ndustrial career. No better example of the change that is taking place can be found than the progress of the cotton-spinning industries.

"In 1880-81 there were 13,307 looms and 1,470,830 spindles at work, employing 39,537 people. In 1887-88 there are no less than 18,840 looms and 2,375,739 spindles and 80,515 people at work.

"The exports of Indian yarn and cotton cloth were valued at Rx. 1,909,134 in 1880-81. In 1887-88 they came to Rx. 5,227,928, and the returns of the current year show still further progress.

"These are results of which India may well be proud; they have been achieved without the fostering aid of Protective Tariffs or any special assistance from Government, and are due to the patient industry and intelligence of the Indian people, and to the enterprise of her capitalists, who have begun to avail themselves of the natural advantages of the country; under these circumstances it may confidently be anticipated that the ground that has been occupied will be maintained, and that still greater progress will be made in the future.

"Nor does there seem to be any good reason why India should not shortly undertake the manufacture of iron on a large scale with success.

"I have tried to state fairly both the probable difficulties of the future, and the reasons that exist for holding that we shall be able to encounter them successfully, and my deliberate conclusion is that, while there is every need for economy and for husbanding our revenue, there is no ground for desponding or pessimist views. Unless some unforeseen disaster occurs, there is every reason to hope that the lapse of two or three years will show a decided improvement in the financial position of the Government of India. It is true that the surplus which we have been able to show in the Estimates of the coming year is little more than nominal, only Rx. 106,300, but the Estimates have been framed with great moderation, and, if the Indian revenues continue to exhibit their usual elasticity and no unforeseen disaster occurs, I anticipate that the Financial Statement of 1890-91 will show decided improvement.

"Falling off in the Revenue from Salt.

"As a preliminary step in dealing with the question of the causes of the falling off in the Salt-revenue during the current year, I wish to point out that the quantity of salt paying duty in any year is not a perfect test of the quantity of salt actually consumed in that year by the people. There is always a large amount of salt in the hands of dealers, and a falling off in any one year in the quantity of salt paying duty may represent a reduction in the quantity of salt in the hands of dealers, and not a reduction in the quantity of salt actually consumed.

"It will be convenient to treat Burma separately from the rest of India, as that Province has been subject to special conditions.

"In 1884-85 the recorded consumption, that is, the quantity of salt on which duty was paid, increased by 2,010,000 maunds, or 6·8 per cent.

"In 1885-86 there was a falling-off of 742,000 maunds, or nearly 2·4 per cent.

"There is no ground for assuming that in 1884-85 there was anything approaching to an increase of 6·8 per cent. in the quantity of salt actually consumed by the population, and there is just as little ground for supposing that in 1885-86 there was a falling-off in the real consumption of 2·4 per cent.

"These variations were due entirely, or almost entirely, to trade fluctuations, and the actual consumption of salt in 1884-85 per head of population was probably not, in any considerable degree, higher than in 1883-84, and was not lower in 1885-86 than in 1884-85. I state these figures in order to show that

an increase or decrease in the quantity of salt that pays duty in any one year does not necessarily indicate a corresponding increase or decrease in the quantity actually consumed.

"Opinions vary as to the effect on the real consumption of a rise of duty. Some authorities hold that it has very little effect; others that it has a considerable effect. Experience seems to show that the truth lies between the two opinions, and that a rise in the rate of duty has an appreciable, but not a very great, effect on the real consumption. But a rise in duty may have a considerable temporary effect on the trade and on the quantity of salt on which duty is paid, especially when rumours prevail that the rise in duty is not likely to be permanent.

"The raising of the rate of duty in January, 1888, was followed by reduced issues, and rumours regarding an impending reduction of the duty have had an unfavourable effect on the trade during 1888-89. In Northern India persistent rumours have prevailed of an impending change, and it was believed by the dealers that the rise in the rate of exchange which took place in January, 1889, would so improve the position of the Government of India as to lead to the reduction of the duty. These rumours have had the effect of checking issues and causing traders to keep their stocks at a minimum. No trader was willing to pay a duty of R2-8 a maund on salt so long as it was expected that the duty would be shortly reduced.

"This state of affairs was accentuated and brought to a crisis by a telegram sent by Reuter's Agency on the 1st of March and published in the Indian newspapers of the following day. The telegram stated that the Secretary of State for India, speaking on 28th February, had said that 'he was convinced that the earliest occasion should be taken to abrogate the increase in the salt-tax.'

"The telegram was published on a Saturday. On the following Monday sales of salt in Bombay began to fall off, and by Tuesday they had practically ceased. On that day only one application was received for the removal of 267 maunds of salt. The salt merchants applied to the departmental officials stating that trade was paralysed, and enquiring whether it was true that the duty was to be reduced. On the 5th of March one firm telegraphed direct to the Government of India in the same sense.

"On the 9th and 10th of March the Government of Bombay drew attention to the disturbance to the trade, and on the 12th the Accountant General tele-

graphed that the estimate of salt receipts must be reduced for that Province alone by nearly 16 lakhs of rupees, as salt sales had ceased since the 4th of March.

"The Commissioner of Northern India Salt-revenue telegraphed on the evening of 15th as follows :—

'Trade is disturbed by telegram published locally on second instant. Lord Cross's opinion regarding salt-duty understood to mean that reduction is imminent. Collections fell from average R55,000 to under R1,000 daily from fourth to eleventh. In consequence of the contradiction published on twelfth trade is since recovering. Collections on twelfth were R16,000, on thirteenth R38,000. Progress is watched.'

"The recent news is more favourable, as the rumours of an intention to reduce the duty have been contradicted through the agency of the Press. But the magnitude of the effect of these rumours on the revenue will be understood when I explain that at the end of February the estimate of Salt-revenue for the current year was Rx. 7,840,700, whereas it is now taken at Rx. 7,676,900, a reduction of more than 16 lakhs of rupees. No doubt, this amount will be to a very great extent recovered, but probably too late to materially affect the revenue of 1888-89.

"There have been other causes also at work which unfavourably affected the Salt-revenue. In Calcutta, the trade was greatly disorganised after the increase of the duty, and the price of salt (free of duty) rose from 11·5 annas a maund in December, 1887, to 28·3 annas a maund in February, 1888, but has since fallen to 14·6 annas a maund in February, 1889.

"In Madras, where the Government was giving up its monopoly of manufacture, the manufacturers and traders secured something like a monopoly for themselves with the natural result of raising the price to the public. The Salt-revenue of the year has also been adversely affected by the want of rain and prospects of a bad harvest in certain tracts. I mention these facts not with the view of showing that the increase of the salt-duty can have no effect on consumption, because I cannot believe that an increase of 25 per cent. should not have some effect, but in order to make it clear that there is as yet no ground for assuming that the falling off in the issues of salt, which has occurred, is permanent and due to the increased cost which the public have to pay for that article. The publication of the present Financial Statement will dissipate the fears of an immediate reduction of the salt-duty, and we shall doubtless see an increase of the issues.

"The following figures giving the total quantity of salt on which duty was paid from the beginning of the financial year to 22nd February for a series of years shows the amount of falling off in the current year (Burma excluded) :—

	Maunds.
1882-83	25,068,000
1883-84	25,832,000
1884-85	27,093,000
1885-86	26,714,000
1886-87	27,603,000
1887-88	27,847,000
1888-89	26,797,000

These figures show distinctly that there had been a considerable falling off before Reuter's telegram was received, but the quantity that paid duty up to 22nd February in the current year is larger than the quantity which paid duty in any year, except one, previous to 1886-87, and is 1,729,000 maunds, or 6·9 per cent. in excess of the quantity that paid duty in 1882-83, the first year after the duty was reduced. Even allowing for increase of population, the issues of salt in the current year to 22nd February last are sufficient to provide as large a quantity of salt per head of population as in 1882-83.

"In Lower Burma there has been a great falling off in the quantity of salt that paid duty in 1888-89, but that falling off is mainly due to the excessive imports of the preceding year.

"The falling off in 1888-89, which seems excessive at first sight, is explained by the great imports of 1887-88, the average for the two years being not much below the normal quantity.

"Salt is locally manufactured on the sea coast in Burma, and there is a certain amount produced from brine wells in Upper Burma. The local manufacture is, from the nature of the case, insufficiently supervised, and an experienced officer of the Northern India Salt Department has just been deputed to Burma by the Government of India to enquire into the whole question on the spot. It is said that the increase in the rate of duty on salt interferes to some extent with the local production of *ngapi* and salted fish, and has led to an increased import of salt fish from abroad. The facts are, however, obscure, and a final opinion cannot be formed until the report of the officer specially deputed to Burma has been received.

"Excise Policy.

"I take this opportunity of correcting a misapprehension which has arisen in some quarters regarding the policy of the Government of India in connection with the Excise-revenue. Last year Mr. Westland used the following language in the Legislative Council :—

'I look hopefully to a considerable increase in the Excise-revenues, and believe that a great deal might be done in Northern India by the introduction of the methods which, in Bombay and Madras, have so powerfully contributed to the increase of revenue under this head.'

"With reference to this language it has been alleged that Mr. Westland expressed gratification at the prospect of an increase in drinking among the Indian population on account of the increased revenue which such a change in the habits of the people would produce. I make no insinuation of wilful misrepresentation against those who have brought this charge, nor do I say that they acted otherwise than in good faith, and yet the charge is absolutely without foundation. Mr. Westland used the language which I have quoted in the Legislative Council of the Government of India, and in the presence of the Members of that Council. His remarks passed without challenge. Is it conceivable that if he had meant, or been understood to mean, that the people of India should be encouraged to drink in order that the revenues of the Government of India might grow, there would have been found not a single Member of that Council, official or non-official, to protest against the adoption of such a policy?

"Less than two months afterwards the Financial Statement for 1888-89 was published under Mr. Westland's signature, and in that statement he used language which puts his meaning beyond the reach of cavil. The words he used were as follows :—

'As regards Excise it will be seen that it is in Madras and Bombay that the revenue-administration has been most successful, as these two provinces with 31 and 16½ millions of inhabitants respectively produce a revenue nearly as large as that of Bengal with 69 millions. In fact, in both these provinces a very remarkable progress has been made. The whole system of distillation has been brought more thoroughly under control, and stricter and more methodical preventive measures have enabled the Government to greatly enhance the rate of duty : for the question of the rate of duty which it is possible to levy is simply the question of the prevention of illicit distillation.'

"Mr. Westland's expectation was that by the prevention of illicit dealings it would be possible to raise a larger revenue, the increase of revenue being

accompanied not by an increase of, but by a check on, drinking. To show that there really was, and is, extensive smuggling in Northern India, I will quote a passage from the report of the Financial Commissioner of the Punjab, who is now the Lieutenant-Governor of that Province, for the year 1881-82:—

'Mr. Hawkins, the Deputy Commissioner of Amritsar, says—"There were twelve cases of illicit distillation. It is notorious that there are few villages in this district which have no private stills of their own. The police are constantly finding pieces of stills and jars of materials in deserted houses while searching for other property." The Lahore District has also a bad reputation in this respect. The Deputy Commissioner of Jullundur, Mr. Bullock, writes—"Illicit distillation is of very general occurrence throughout the district. Twenty-four cases have been detected, and it is to be hoped that some check will be found to have been given to the system, which, however, we can never expect wholly to extirpate."

'In Hoshiarpur the khansama of a dâk bungalow was found to possess a still, and there were three cases in which villagers were convicted of the same offence. * * * *

'Whenever liquor-shops in Native States are situated close to our border, it is a common practice for our villagers to resort to them, and they often bring back small quantities of spirits for their own use and that of their friends. Even when the sadr distillery system has been adopted at the request of our Government in independent States, the price of liquor is far less than in our own territory. This must be due to lower rates of still-head duty. The Assistant Commissioner in charge of excise at Sirsa, Mr. Kennedy, says—"In Patiala spirits are sold at about 8 annas a bottle, not differing much in quality from the Sirsa spirits at R1-8 a bottle. The only hope of grappling with the existing evil is to lower the price of Sirsa spirits so as to bring them into competition with the Patiala spirits. Any other method is impracticable. The Sikh Jats will drink; and we cannot wean them from the practice by making the cost of liquor high; the only effect of this is to demoralize them by leading to a continual evasion of the law without any corresponding benefit in increased sobriety."

'There is probably some exaggeration here. Mr. Lyall is inclined to believe that the dearness of lawfully-distilled liquor had led to a decrease in drinking among the Sikh population, but to an increased use of opium and perhaps also of bhang.'

"The state of things which these extracts show to have existed in the Punjab in 1881-82 is the state of things which has continued to exist up to the present time.

"In May 1887 the following opinion was expressed by a Punjab officer:—

'The Excise Department in this Province has never been properly supervised and controlled, for the simple reason that the Department has never had a responsible head

and has been left to take care of itself with such perfunctory attention as district officers have been able to pay to it. I can speak on this point from twenty-four years of district experience in various parts of the Province. The extent to which country spirit is illicitly manufactured and sold is enormous, and the quantity so disposed of is in my opinion as large as that which is lawfully sold; and the excise-revenue is therefore much smaller than it would be if the Department were carefully controlled.'

"It is right that I should mention that the Financial Commissioner did not accept these remarks in their entirety. He remarked that the 'description of Excise management in the Punjab must, in the absence of specific evidence, be regarded as exaggerated,' but no authority, so far as I am aware, has ever denied that there was, and is, a very great amount of smuggling and of illicit distillation in that Province.

"I have now shown that, when Mr. Westland, speaking on behalf of the Government of India, anticipated an increase of Excise-revenue in Northern India, he based his expectation of an increase not on the possibility of being able to increase the consumption of liquor and drugs but on the prospect of being able to increase the revenue by means of a stricter control and the suppression of illicit practices. I shall show by one or two instances that the policy which Mr. Westland favoured had already proved a marked success in other Provinces, both in respect of checking consumption and increasing the revenue.

"From 1st October, 1884, a new system of Excise-administration was introduced into a portion of the Madras Presidency. The change in system resulted in a rise in the price of country liquor, varying from eight annas to one rupee per gallon. The average annual consumption of the three years of the new system is less than the consumption of the last year of the old system by more than 6 per cent., while simultaneously the average annual revenue increased by more than 35 per cent. These figures show conclusively that a large increase of Excise-revenue is not necessarily attended with an increase of consumption, and may coincide with a positive decrease.

"A still more remarkable illustration of the possibility of increasing the Excise-revenue while diminishing the consumption is afforded by the statistics of the consumption of ganja in Bengal. Ganja is probably the most pernicious of all drugs in common use, and the Government has never felt any hesitation in increasing the rate of duty leviable on it.

"Notwithstanding the large increase of population which must have taken place between 1868-69 and 1887-88, the number of shops for the sale of ganja has decreased during these years by more than 27 per cent., and the consumption by more than 22 per cent., while simultaneously the revenue has increased by more than 150 per cent., and the incidence of taxation per seer has increased by more than 226 per cent. These figures may be left to speak for themselves. The reduction during the same period in the number of shops for the sale of opium and in the quantity of opium consumed is even more remarkable than in the case of ganja, but there has not been the same increase of revenue, mainly, I believe, because opium smuggling prevails extensively.

"In mentioning this subject my object has been to defend my predecessor against the charge which has been brought against him, and indirectly against the Government of India, of encouraging intemperance for the sake of revenue, and it must not be supposed that I have been dealing with the whole Excise-system of India, or that I intend to assert that that administration has been as successful in every instance as in the cases which I have quoted.

"MANAGEMENT OF GOVERNMENT BALANCES.

"The present year has seen a great scarcity of money in the Indian markets, which has kept the Bank rate at 12 per cent. for a considerable period, and, as usually happens in such cases in this country, the question has been raised whether Government might not in some way come to the assistance of trade.

"The scarcity is no doubt owing in part to an early cotton season in Bombay coinciding with a demand for rice in Burma, and other customary requirements at this season; but the difficulty appears to have been aggravated by the doubtful position of silver. But for this it seems inexplicable that for week after week there should be a difference of 9 per cent. in the rate of money in London and India, and yet that in some weeks the whole amount of bills and transfers offered by the Secretary of State should not be taken up.

"That so high a rate of interest is prejudicial to trade is obvious, and Government has not been unmindful of the fact. The best way in which Government can assist trade is by providing that the Secretary of State's drawings shall never be curtailed for lack of money to meet them, and in one week demands for bills and telegraph transfers exceeded 77 lakhs. Arrangements are also made to grant telegraph transfers freely at a small charge between the three Presidency-towns, and Government, besides keeping up the normal current balances,

has further been able to offer to the Presidency Banks at Calcutta and Bombay temporary loans at their own minimum rate of interest if they cared to avail themselves of the offer. Owing to the demands upon it the Government cash balance, during this period, fell lower than it had done for some years, and at the end of February was about two crores lower than on the corresponding date of last year.

"The charge that Government does not do all it might to assist trade sometimes takes the form of an assertion that the currency balances should be lent out in a time of pressure. This is of course impossible, as the currency balances are pledged by law to secure the convertibility of the currency notes, and can no more be lent to the market than can the gold in the Issue Department of the Bank of England.

"Another contention is that the cash balance of the Government of India is too high. Now, the question whether the Government cash balance is too high or too low is one that must be determined by the experience of those who actually deal with that balance and are responsible for seeing that there is sufficient money in the treasury to meet all the claims against Government.

"I do not think I exaggerate when I say that every person who has experience of the actual work of dealing with the balances in this country is in favour of rather a high cash balance. The question has been frequently considered both in India and in England, and though a cash balance of 10 to 13 crores may seem enormous, yet if we reflect on the special difficulties in the way of suddenly obtaining a large amount of cash in this country, on the sudden and large demands to which Government is exposed, and on the enormous extent of country over which the balance has to be spread, it will easily be recognised that the mere fact of the cash balance being large is no proof that it is larger than is required by the wants of the case.

"Some authorities hold that, if anything, the Indian cash balance has been kept somewhat too low in recent years. In that opinion I am inclined to concur. The cash balance of recent years has been low, because the claims against the Government were heavy owing to expenditure of all kinds, and it was thought desirable to avoid borrowing more than was absolutely necessary.

"I have mentioned the allegations (1) that Government ought to lend out the currency balance, and (2) that Government keeps too high a cash balance, simply in order to clear the ground. There is on force in them, and

they could only be made by persons ignorant of the facts of the case. I now come to what is the real question, namely, the expediency of the maintenance of the Reserve Treasuries in the Presidency-towns. Should the Government keep the whole of its spare cash in the Presidency Banks, or should it aim at keeping balances of tolerably constant amounts in those Banks, the surplus being kept in the Reserve Treasuries? This is a question which deserves consideration, and on which there may reasonably be a difference of opinion, though I can hold out no hope of a change in the policy of the Government in this respect, and, speaking for myself, I cannot recommend any such change.

"The justification for the existence of the Reserve Treasuries is to be found in the special conditions affecting the Indian money market. These special conditions are the liability of that market to extreme pressure at times, the difficulty in adding temporarily to the amount of cash by drawing on other markets, and the magnitude of the cash transactions of the Government as compared with those of the trade. Under the circumstances I have just stated, and looking to the fact that the Government in case of war, famine or other unexpected cause is exposed to the risk of having to meet sudden and large demands on it for cash, it was decided by Lord Northbrook's Government that it would be to the interest both of the commercial public and the Government of India that the surplus cash for the time being of the Government of India in excess of certain regulated balances in the Presidency Banks, and the cash in Mufassal Treasuries, should be kept in Reserve Treasuries.

"It was held that, if the whole of the surplus cash was kept in the Presidency Banks, tràde would rely on the permanence of the resources thus supplied to it, and that, in case of a sudden demand for cash, the Government of India would either be forced to abandon its right to reduce its balance in the Presidency Banks, or risk producing a financial crisis by suddenly and largely reducing the resources of these Banks.

"To show that this is not an imaginary fear I will quote a telegram received in 1874 from the Government of Bombay:—

'Clear the line. You are placing the Exchange Banks and trade of Bombay in great danger. The eight Exchange Banks are indebted to the Bank of Bombay 68 lakhs of rupees, half payable on demand, secured by Government paper, and remainder in February. Their balances for current purposes in the Bank of Bombay are under 20 lakhs of rupees; balance of other customers of Bank of Bombay exceedingly low. Bank of Bombay has to meet Council Bills for 25 lakhs of rupees arrived from England this

morning, and similar Bills for 20 lakhs of rupees will shortly arrive. Bills on Calcutta absolutely unsaleable. If you draw more on Bank of Bombay, they must call in the sums due from the Exchange Banks, and there will be a general panic and serious danger of stoppages.'

"There was at that time a Government balance of about 100 lakhs in the Bank of Bombay, and the proposed withdrawal, which called forth this startling protest from the Governor of that Province, only came to 35 lakhs. This money was required for immediate expenditure in connection with the Bengal Famine. I do not think a stronger argument could be produced to show the dangers that might arise if the Government of India reverted to the old system of keeping all its spare cash in the Presidency Banks. The arguments which weighed with the Government of India in introducing the system of Reserve Treasuries are contained in a Despatch to the Secretary of State, No. 256, dated 30th June, 1874, printed as an Appendix to the Financial Statement. It will show that the policy of the establishment of Reserve Treasuries was adopted deliberately and in order to meet real difficulties.

"It has been urged that Government could relieve the market by lending out the balance of the Reserve Treasuries on favourable terms to the Banks; but if this course were followed the same difficulties that arose when the Presidency Banks held the whole of the surplus balances would again occur. Trade would become accustomed to rely on the resources furnished by the Government, and at a time of pressure the withholding of the assistance usually given by Government might have a very serious effect.

"Ways and Means—India, 1889-90.

"The cash balance of the Government of India is expected to be Rx. 12,900,000 on 1st April next. It is the present intention of the Government of India to raise a loan of 2½ crores during the coming year, and the closing balance of 1889-90 is estimated at Rx. 12,533,000.

"It is expected that the Secretary of State will have drawn £14,310,100 (true sterling) during the current year, and that in the coming year he will draw £14,690,900 (true sterling).

"PROPOSED RUPEE LOAN.

"Although it is estimated that a loan of Rx. 2,500,000 will be required during the year, no pledge can be given either as to the amount of the loan or the time when it will be issued, or the conditions which will attach to it. According to

the estimates, a loan of Rx. 2,500,000 will give an ample cash balance, and if matters turn out favourably it may not be necessary to borrow so much.

"LOANS TO MUNICIPALITIES, &c.

"Before 1888-89 all loans and advances of public money were treated as advances on Imperial account. The loans were made on the advice and through the agency of Local Governments, and Local Governments were so far responsible that irrecoverable sums were charged off as Provincial Expenditure. But they had no special concern with the punctual and complete realisation of the interest due on these advances, which was credited as an asset of Imperial Revenue. At the instance of the Secretary of State the arrangements were re-considered, and the occasion was thought appropriate for extending the principle of decentralisation beyond the limits of the Revenue account. The interest received on these loans is almost always higher than that paid by Government on its public loans, and by surrendering this advantage it was obvious that an inducement might be offered to Local Governments to undertake complete responsibility for the administration of this department of finance. This responsibility was accepted in every case, the necessary arrangements were completed last year, and orders were published in the Gazette of India of 5th January, 1889.

"In connection with this subject the question of lending from public funds to Municipalities and other public bodies was considered. It was believed from the Secretary of State's observations in a despatch of September, 1887, that, under the arrangements described above, sanction might be given to a relaxation of the restrictive policy which has been followed in this matter since 1876.

"Experience has shewn that the rigid refusal to lend money to small Municipalities and Local Boards has operated unfavourably in delaying and preventing sanitary improvement and reform. It has been found that such bodies cannot raise money in the market, except at high rates of interest; and Municipalities have in several cases found it necessary in consequence to abandon, or indefinitely postpone, well-considered schemes of drainage and water-supply. The Government of India accepted the Secretary of State's invitation to review the question, and the Secretary of State has, in consideration of the fact that, under the scheme described above, Provincial responsibility will be enforced, withdrawn the prohibition.

"It is not proposed at present to adopt the policy of lending to the Presidency Corporations, as they have a public credit of their own and can borrow,

in ordinary cases, in the open market, while the claims on the Government of India are so great that it cannot without difficulty find the necessary funds. But in pursuance of the principles enunciated above, Local Governments have been authorised to grant loans to Mufassal Municipalities in future, on the following conditions :—

"(1) Loans may be granted only for works of public and general convenience and utility, such as drainage and water-works, bridges and the like ; and not for works which are merely or mainly ornamental or convenient, such as town halls, public gardens or market places.

"(2) A local body, having borrowed from Government, may not borrow from any other source until it has obtained the sanction of the Local Government concerned, which should not be given until it is clearly shown that the sum lent by Government, with interest thereon, is duly secured.

"I have stated that the rules regulating the new scheme were published in the Gazette of India on 5th January. The demands of Local Governments have since been received. These demands, so far as they relate to advances to cultivators, to embarrassed landed proprietors, and for drainage embankments and the like, have no special interest, as the only change in respect of them is the transfer of administration and responsibility. As regards loans to Mufassal Municipalities, the importance attached to the change of policy will be understood when it is stated that, notwithstanding the short notice given, the applications for loans for Municipal sanitary purposes amount to Rx. 254,900, which sum it has been found possible to place at the disposal of Local Governments. The projects comprise schemes of water-supply for Allahabad, Agra, Nagpore, Delhi and Peshávar. Although an important step has now been taken towards facilitating the carrying out of local works and improvements, the large claims on the resources of the Government of India on account of railway and irrigation works will prevent, for the present, any very important extension of the system.

"Summary.

"It will be convenient if I briefly summarize the chief features of the financial position as they now present themselves.

"(*a*) The Accounts of 1887-88 have closed with a deficit of Rx. 2,028,832, including as expenditure Rx. 456,017 on account of Special Defence Works. Excluding the cost of these works, the deficit was Rx. 1,572,815. This has

resulted mainly from a special charge of Rx. 1,059,000 incurred in connection with the conversion of the 4 per cent. sterling stock into 3½ per cent., from heavy military expenditure in Burma, from a fall in exchange and in the price of opium, and from a reduction in Railway Revenue, counterbalanced by an improvement in Revenue and reduced Expenditure under other heads.

"(*b*) The Revised Estimates of 1888-89 show a deficit of Rx. 201,700, including as expenditure Rx. 818,300 on account of Special Defence Works, and a surplus of Rx. 616,600 if the cost of these works be excluded. Seeing that there has been a further fall in the rate of exchange, which has been taken for the current and coming year at 1*s.* 4·38*d.* = 1 rupee, heavy unforeseen expenditure on Military Expeditions, and a decline in the Salt-revenue owing to persistent rumours of an impending reduction of the duty, the result is satisfactory.

"(*c*) The Budget Estimates for 1889-90 show a surplus of Rx. 106,300 after providing Rx. 1,102,900 for Special Defence Works. If the cost of these works be excluded, there is a surplus of Rx. 1,209,200. Imperial revenues have exceived a special asset of Rx. 740,000, towards which all Local Governments, except the Punjab, contributed. Of this only Rx. 250,000, most of which represents the proceeds of the re-imposed Patwari-cess in the North-Western Provinces and Oudh, will be permanent, the remainder being a receipt of next year only.

"(*d*) The Capital expenditure on Railways and Irrigation Works is expected to amount to Rx. 1,857,800 in 1888-89, and Rx. 4,089,500 is provided for 1889-90. The expenditure in 1888-89 is really Rx. 3,264,500, but Rx. 1,406,700 of it has been transferred to the Capital Accounts of the Indian Midland and Bengal-Nagpur Railways on account of the cost of the Sindia and Katni-Umaria Railways transferred to them.

"(*e*) As regards the general financial position of the Government of India, while there is every need for economy and for husbanding the revenue, there is no ground for desponding or pessimist views. There are probable difficulties in the future, but there are also reasons for holding that we shall be able to encounter them successfully. The Estimates of Revenue for 1889-90 have been framed with moderation.

"(*f*) The Secretary of State proposes to draw, during 1889-90, £14,689,900 of Council Bills. He also proposes to raise a loan of £3,750,000 under the Oudh and Rohilkhand Railway Purchase Act for the purpose of advancing funds to Railway Companies.

"(*g*) The Government of India will probably raise a loan of Rx. 2,500,000 in India, of which Rx. 584,000 is required for the Dock Works at Calcutta and Bombay, and Rx. 254,900 for Municipal Water Works, but no pledge can be given either as to the amount of the loan or the time when it will be issued, or the conditions which will attach to it."

His Excellency THE PRESIDENT said:—"I think the best mode of procedure, unless hon'ble members see fit to object, would be that I should now put the Motion which is on the paper and that we should adjourn until Friday next. It will then be open to hon'ble members, if they desire to offer observations on the Financial Statement, which we have just had the advantage of hearing, to make them on the Motion that the Bill should pass. In the meanwhile hon'ble members will have had the leisure to consider the Statement in all its bearings."

The Motion was put and agreed to.

The Council adjourned to Friday, the 29th March, 1889.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 29th March, 1889.

Government of India Central Printing Office.—No. 108 L. D.—2-4-89.—316.—C. H. L.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 29th March, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble R. Steel.

The Hon'ble F. M. Halliday.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble G. H. P. Evans.

The Hon'ble Maung Ôn, C.I.E., A.T.M.

The Hon'ble Muhammad Ali Khan.

The Hon'ble J. W. Quinton, C.S.I.

NORTH-WESTERN PROVINCES AND OUDH KANUNGOS AND PATWARIS BILL.

The Hon'ble MR. QUINTON moved that the Bill to authorise the imposition of a Patwari-rate in the North-Western Provinces and Oudh, and make certain provisions respecting Kanungos and Patwaris in those Provinces, as amended, be passed.

The Hon'ble MR. EVANS said :—

"The Financial Member is to be congratulated on the lucid exposition he has given of the present financial position. That position is distinctly better than was generally expected. The diminution of the estimated deficit for 1888-89 and the estimate for a small surplus for 1889-90 in the face of increased expenditure and without the imposition of additional taxation are welcome surprises, though accompanied by a note of warning as to the future. No one will

expect from me a detailed criticism of the Budget. I am not an expert in finance, and my time is too fully occupied for me to be under any temptation to attempt the *rôle* of an amateur financier, but I propose to make a few remarks upon certain points.

"The difficulties besetting Indian finance have been graphically described by Sir David Barbour. Famine and war—the act of God and the Queen's enemies—are beyond our power to avert; and there is no international insurance company to guarantee us from loss from such causes. We are our own insurers. As to the first, we are doing our best to mitigate the evil by improved means of communication between different districts and provinces. As to the second, we are doing our best to make it a dangerous and hazardous thing for any enemy to attack us; but the expenses are much increased and efficiency diminished by the short-service system, with the expensive and useless transport which it necessitates. The advantages of the short-service system are advantages to England, not to India.

"As to the opium-revenue, the uncertainty of the future is great, but I have heard of no proposal by which it can be lessened. We can only hope for the best and look out for fresh sources of revenue should this dwindle away in course of time.

"But the fourth difficulty—the exchange—is one which high and competent authorities believe can be dealt with and practically removed by international agency.

"Though I, like most other people in India, have devoted some consideration to this problem and have had the opportunity of seeing the report of the late Commission and the evidence taken, yet the questions involved are far too complicated for me to offer any opinion on the details of the schemes that have been proposed for the removal of this great source of embarrassment.

"There are, however, one or two great facts and principles that seem to stand out clearly beyond the sphere of doubt or uncertainty.

"It seems clear that it cannot be for the advantage of the empire as a whole that there should exist within its limits two monetary standards varying largely and rapidly in relative value.

"In the present days of keen competition, of telegraphs and of steam communication, any cause which hampers trade and impedes the free flow of capital

to the fields where it may be most profitably invested must be injurious. There can be no doubt that the absence of a common money standard between England and its Colonies on the one hand and its Eastern Empire on the other hand produces these evils.

"By introducing an additional element of uncertainty it puts difficulties in the way of honest and legitimate trade and makes business more risky.

"We have just seen the bank rate in Calcutta standing week after week at over 12 per cent., while the London rate was 3 per cent. or under. We all know the difficulty of inducing English capitalists to lend money in India. They are shown the return they will get in rupees, but their answer is—what will the rupees be worth when we get them? In India there is a reluctance to take sterling loans, for the borrower cannot tell how many rupees will repay the interest or principal at a future date.

"The Budget Statement now before us shows clearly the embarrassment to which the present state of things subjects the finances of this country, and the danger of future serious alteration in the relative values of gold and silver appears to be very great.

"I understand that the United States now coin every year £5,000,000 sterling of silver. This they cannot continue to do permanently unless they are prepared to adopt a silver standard.

"There are also rumours of Russia and other countries wishing to adopt a gold standard. Any one of these changes would probably have a serious effect on the relative value of gold and silver.

"I see no method by which we can get over the uncertainty which now hangs over the future except by an international agreement or understanding of some sort, and I hope that the Government of India will continue to press the importance of this question on the attention of Her Majesty's Government in England.

"This period of pressure, when the Provincial Governments have been obliged to come to the assistance of the imperial revenue, is not an opportune moment for inquiring which taxes are most objectionable, or for urging increase of expenditure which is not absolutely necessary. But I deem it my duty to draw attention to certain facts connected with the administration of justice in Bengal. The surplus revenue produced by the administration of civil justice

in Bengal (appearing under the head of Court-fees) is, according to the figures supplied by the High Court, over 30 lakhs per annum. I understand the correctness of these figures was not admitted by the late Financial Member, though he never produced any statistics to contradict them. Whether they are correct or not, it cannot be denied that the surplus is large. This surplus is said to be applied in meeting the deficiency arising on the administration of civil justice in other parts of the Empire. I will not now discuss the justice of taxing the litigants of Bengal to meet the costs of litigation in other provinces.

"The point I desire to bring forward is the narrower but graver one that, notwithstanding the surplus arising from civil litigation in Bengal, the provision made for the administration of civil justice in that province has been insufficient. The High Court has more than once of late years drawn the attention of the Government to the fact that the provision made for the administration of justice in Bengal is inadequate; that while the business and the surpluses have increased by leaps and bounds, the increase of the subordinate judiciary has not kept pace with it; that the strain on the Subordinate Judges is excessive and the arrears heavy, while the number of Munsifs is wholly inadequate; that the prevalence of sickness amongst officers of the Subordinate Judicial Service and the frequent collapse of health, and even more serious consequences, are largely due to the unhealthy and ill-ventilated huts in which those officers have to hold their Courts and to excessive overwork.

"It is reported that the High Court recently asked for the appointment of a large number of additional Munsifs to cope with the continually increasing current business and with the arrears, and that the Local Government recommended the sanction of a certain number, being less than what the High Court asked for, but that the Government of India cut down heavily the number recommended by the Local Government and sanctioned a much smaller number and appointed a commission to make inquiries with a view to future alteration in the system. I do not suppose the High Court to be infallible. The High Court may study efficiency more than economy, but if and so far as the High Court and the Local Government are agreed upon a question so particularly within their knowledge,—the number of Munsifs now needed in Bengal,—it appears to me that the Government of India has taken a heavy responsibility in not acceding to the demand. The zamindars of Bengal, who have to pay their revenue to the day, have just cause of complaint when they cannot get their rent cases speedily tried for want

of sufficient Munsifs. That there are not enough Munsifs for the work is a patent fact; and the High Court was of opinion, at the passing of the Bengal Tenancy Act, that it would not be safe at present in the interests of the raiyats to secure greater speed and economy by a more summary method of trial, and in this opinion the Governments of Bengal and India agreed. It would thus appear to be the bounden duty of the Government having a surplus from this source to provide the necessary number of officers, while it is far from clear that the duty has been performed. The commission, whatever future reforms it may recommend, will not try cases or relieve the present pressure.

"The other evils—insufficient accommodation and an insufficient and under-paid establishment—are equally patent to all who are acquainted with the mufassal of Bengal. They have grown up gradually under former Governments and intensified, and it would not be fair to ask the present Local Government to cure them at once by a stroke, as it were, of the pen.

"I am aware that the Local Government has recognised these evils and attempted to meet them, but has been hampered by want of funds. Some progress has been made and a good deal of money spent on the larger Courts. But the state of things is unsatisfactory, and it is right that attention should be drawn to the fact that the department which is in this unsatisfactory state is one which actually not only pays its way but yields a large surplus.

"Last year, on the passing of the Petroleum Bill, I drew attention to the possibility of some relief to our finances from a complete overhauling of the Home charges. I will not go over the same ground again. I understood that the Secretary of State was about to appoint a commission to enquire into various matters connected with those charges, but I have not heard of any result as yet.

"With regard to the future, I venture to think that the Government might profitably turn their attention to the possibility of a general succession-duty. It is a tax unobjectionable in principle. It cannot be so difficult to work or so vexatious as an income-tax; the yield would be considerable if a working scheme could be devised, and the revenue-authorities instructed to see that the duty was collected and not evaded, instead of the collection being left entirely in the hands of the Civil Courts, as is the case with such succession-duties as are now paid by a limited class of the inhabitants of India."

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The Hon'ble RÁJÁ DURGA CHARN LAHA said:—"I must confess to an agreeable surprise. I never expected that there would be a surplus, no matter how small. There was a general apprehension of a deficit. The Finance Minister has given us a surplus, which is so far satisfactory. Looking, however, to the means by which this surplus has been brought about, I am bound to say that the financial position does not seem to me to be in a sound condition. The surplus this year has been produced by taking a contribution of 74 lakhs of rupees from the Provincial Governments. The Imperial Government has been benefited by this contribution, it is true, but the resources of Local Governments have been considerably crippled. I do not wish now to discuss the policy by which the Provincial Governments will be starved to supply the needs of the Imperial Government. But it cannot be denied that the Local Governments will be great sufferers by thus ministering to the wants of the Imperial Government. They will have to find means by local taxation to fill up the gap which has been created in their resources. I may be permitted to mention the patwari-cess by way of an illustration of what I mean. Had it not been for the contribution which the Imperial Government has taken from the North-Western Provinces, it would not have been necessary to impose this tax. We thus see that, though the country will be saved from imperial taxation this year, there may be taxation in another form in the provinces; and thus it is clear that the provincial contribution has in no way relieved the financial pressure of the country. If the provincial contribution be left out, the budget estimates show a deficit of 64 lakhs of rupees. Even if we take no notice of the temporary relief given by the accidental circumstance of there being a credit of 52 lakhs arising from the receipts on account of exchange on the capital transactions of railway companies, we cannot shut our eyes to the fact that the financial outlook is anything but cheering. The revenue is increasing every year, and still there is a deficit. Within the last eight years nearly 16 crores have been added to the annual revenue, but the expenditure has increased in proportion. Much of this expenditure may be unavoidable, but still it may be possible to keep it in check by having a vigilant watch over it. The Finance Minister tells us that there is no ground for desponding views. Be it so. But I must say that the financial situation of the Government of India has filled me with grave apprehensions.

"It is by practising economy and husbanding the revenue that the financial equilibrium of the country can best be restored. The Government of India is reducing expenditure in all its departments, consistent

with the efficient administration of the country. There is yet room for further economy, especially in the Public Works Department. I have no doubt it will be effected when opportunity offers. The curtailment of high official salaries wherever practicable will also, I hope, engage the attention of the Executive Government. But it is not in India alone that there is room for economy. The charges in England—the Home charges—are a severe drain upon the resources of the country. We find that the expenditure in England is a great deal more than the country can bear. This year the budget estimate of the amount to be remitted to England on account of the Secretary of State's Bills is £14,690,900, equivalent to about 21 crores of rupees. In other words, nearly one-fourth of our revenue is drawn by the Secretary of State. There is an absolute necessity for reducing this amount, and, unless this is done, small savings here and there in India will not afford any appreciable relief to Indian finance.

"The Finance Minister has referred to the falling off of receipts from the salt-revenue. This has been largely due to the groundless rumours regarding an anticipated reduction of the salt-duty. The Secretary of State recently stated that the earliest occasion would be taken to abrogate the increase in the salt-duty. It must have been represented to His Lordship that the increased duty on salt is working great hardship on the people. Such a representation, if it has been made, had no foundation in truth. A slight increase in this duty would hardly affect the people one way or another. I am certain it is neither harassing nor oppressive. The incidence of taxation on account of increase in this duty is so small that the people hardly feel its pressure. The Secretary of State, therefore, need be under no anxiety on this account. Not to speak of the evil effects of a frequent change of policy in regard to any important fiscal system of the country, the abrogation of the increased salt-duty will entail a needless sacrifice of revenue—a sacrifice which will bring but little relief to any class of the community. If the finances be in such a condition as to admit of any reduction of taxation, I would suggest that the taxes which act oppressively on the people be first taken away. The income-tax is working great hardship. No form of direct taxation is suited to our country. If the income-tax be abolished, it would afford a substantial relief and would be really appreciated by the people. Another tax which operates prejudicially to the interests of the people is the rice-duty. It is a duty which greatly affects the material welfare of the people. If it be reduced or abolished altogether, it is certain to add to the prosperity of the country. If it be true

that the peculiar circumstances of Burma make the rice-duty take the place of the land-tax in Bengal, that may be an argument for retaining the rice-duty in Burma, but it is no argument for the retention of so burdensome an impost in the provinces which contribute their due share to the land-revenue.

"The Finance Minister is hopeful that the financial position of the Government of India will under ordinary circumstances shew a decided improvement in a short time. Let us all hope that this expectation may soon be realised.

"In conclusion, my Lord, I earnestly trust that the people may under your *regime* enjoy freedom from further taxation. May the patwari-cess be the first and last form of taxation to be imposed on the people so long as Your Excellency is at the head of the Government."

The Hon'ble SYUD AMEER HOSSEIN said:—"The hon'ble member in charge of finance is to be congratulated on his presentation to this Council of such a full, comprehensive and well-balanced Financial Statement.

"It is indeed satisfactory that in the face of so many and such various difficulties he has been able to show a surplus of Rx. 106,000 in the Budget of the coming year.

"I trust that the next year may be free from those unforeseen disasters which contribute so largely to the augmentation of public expenditure, and that through the usual elasticity of the existing sources of revenue the Hon'ble Minister may be able to show at the end of the year a much larger surplus than what he has very carefully estimated in the Budget, and he may be able to give some substantial relief to the payers of direct taxes, specially those who are taxed for an income below R1,000 per annum under the Income-tax Act.

"My Lord, the deplorable case of this class of tax-payers deserves a merciful consideration at Your Excellency's hands, and I earnestly hope that an early opportunity may be taken by Your Excellency's Government to raise the existing taxable minimum from R500 to R1,000. The parties who pay tax under this class of the schedule are petty tradesmen and clerks in Government offices or in private employ. They form the lower middle classes of the people, and have not only to live decently and appear in public in decent raiment but to maintain a large family. Their necessities are such that, considering the general rise in the prices of the articles of food and clothing during the past twenty years, it is impossible for them to make the two ends meet with a paltry income varying from £34 to £68 a year.

"Moreover, I very much doubt whether the administration of direct taxation in this country, notwithstanding the vigilance and careful supervision of the higher revenue-authorities, is as satisfactory as it should be. It is open to question whether some of those who are returned by the assessors as drawing an income of R500 or upwards really enjoy that income.

"The case of European tax-payers with small incomes is probably still harder. They are not only required to live respectably and maintain a decent appearance in society but to send large remittances home under ruinous rates of exchange.

"I have, however, no doubt, my Lord, that as soon as the Exchequer has attained an equilibrium the unsuitability of direct taxation to this country especially to those that come under the lower classes of the schedule, will force itself into Your Excellency's attention and the desired relief will be afforded, at least to the much-suffering portion of the community."

The Hon'ble MR. STEEL said :—

"At the previous stage of the Kanungos. and Patwaris Bill it was remarked that there appeared to be no sufficient reason why the cess should not be re-imposed on the same scale as before 1882. In reply several speakers have justified the reduction. It has been shewn that the village-accounts are valuable to Government for the purpose for assessing the land-revenue. Also that they are important to the Oudh raiyats as enabling them to protect the interests they have acquired under the Rent Act. The conclusion is drawn that those who have an interest in the accounts should contribute to pay for them. I confess the argument has not convinced me. The zamindars held their interest in State property on the condition that they paid for keeping the accounts, and the fact that the accounts possessed value to others should not disturb this bargain. It has also been suggested that, if the landlords had not been relieved from the ten lakhs, they would have been able to reimburse themselves by exactions from tenants-at-will. It seems to me that, if they have the power of exacting money from their tenants, they are not likely to be restrained from doing so by the arrangement proposed. The exactions of a landlord from a tenant-at-will must be regulated by the ordinary laws of supply and demand. The fact that the ten lakhs are to be paid by Government will not apparently prevent the landlord from making the tenant pay the cess over again.

"The fact is the arrangement appears to be the result of a compromise, and as such has been made the subject of commendation. A compromise may

often be a prudent settlement of a disputed question of law or of fact, but a compromise of principle is always objectionable. The zamindars are naturally enough glad to settle by payment of two-thirds of the amount which might have been demanded from them; but, if we would follow the precedent of Solomon's judgment, the proposal to divide the child has identified the owner.

"And now, My Lord, I beg to express the satisfaction of the public that Government should have followed the precedent of last year, by giving an opportunity for the discussion of their financial arrangements in this Council. The Hon'ble Finance Minister is to be congratulated upon the extremely able and interesting statement he has laid before us. Considering the intricacy and difficulty of the subject with which he has to deal, he has thrown very clear light upon the situation. The results of the past year, if they cannot be deemed altogether satisfactory, are at any rate better than the public had reason to apprehend. The falling off of the revenue of the East Indian Railway is an unfortunate feature, especially as this seems to have arisen from causes which may permanently depreciate the value of that splendid property. The temporary falling off in the quantity of salt which has paid duty I look upon without any concern. My hon'ble friend has given us an explanation. He has attributed it partly to the mistaken notion that the duty was likely to be reduced. But there is another reason which has had an important influence in reducing the amount of duty paid in Bengal during the past year. This is the advance in the rates of freight on salt from Liverpool to Calcutta. The duty of R2-8 per maund is a fixed charge. Until this unfounded rumour arose the dealer in salt has had no object in delaying his purchases in the expectation of a reduction in the duty. But if he had been accustomed to buy salt in bond at 8—10 annas per maund, and the price advanced, as it has done, to R1 per maund in consequence of higher freight, then he would look upon the advance as due to a temporary cause and would restrain his buying in hopes that the bonded price would come down to its old level. In so doing he would act upon the reasonable principles which govern the operations of trade. We may rely upon it that the consumption of salt is going on just the same as before, and increasing with the increase of the population and the improvement of communications. The stocks in the hands of dealers and petty shopkeepers have been depleted, but these stocks will have to be replenished, and the amount of duty paid in the future will be all the larger in consequence. I may say with confidence that not a single coolie has used a pinch of salt the less in consequence

of the advance in the duty. The progress made in the improvement of the revenue of Upper Burma is a promising feature, and we may hope that with the pacification of that province one of our principal financial difficulties will disappear.

"On the expenditure side I feel no inclination to complain of the charges for military works, frontier railways and improved arms of precision for our soldiers. It is for Your Lordship's Government to obtain the best professional advice on these matters, and, having made up your mind as to the value and necessity of the measures proposed, to carry them out with due regard to economy. You may rely upon the support of public opinion in incurring expenditure necessary for the protection of the empire.

"And now, my Lord, I will make some observations concerning the arrangements for the coming financial year. When considering how I might best avail myself of this opportunity, the first thought that occurred to me was the difficulty of making any practical suggestions. The financial policy of Government has been decided on after mature consideration. The assent of the Secretary of State has been obtained. The Finance Minister has been for many weeks engaged upon his budget. This budget consists of an enormous mass of figures, dealing with the income and expenditure of an empire containing a population of two hundred millions. It is complicated by the separation of accounts relating to productive and non-productive works—by expenditure on works which, when complete, will be productive, but which, while as yet incomplete, yield no revenue—by loans to municipalities repayable by aid of sinking funds—by considerations of exchange, affecting not only our annual gold obligations but also our gold indebtedness. It is indeed the most intricate body of accounts ever submitted to a consultative assembly. We have had two days to consider it, and I think I may say that even cursory examination of such materials in so short a period is beyond the powers of man. Even if it were possible to analyze the figures and found upon them any adverse criticism of the budget, it would be impossible for Government to alter on the 29th of March a single arrangement which must come into force on the 1st of April. To one accustomed to deal with financial matters from a practical point of view, the attempt to comment upon such a budget is indeed a discouraging task. I believe, however, that a discussion may have a remote, but yet a practical, value. For the coming year we can do nothing but accept the budget as it stands. It is, however, possible that an expression of public

opinion may influence the Government in future years. I think I may say that in past years our finance has been administered without any support from instructed public opinion in India. At the same time it has been subjected to a certain amount of deleterious influence through pressure on Secretaries of State, by grievance-mongers, ignorant of the wants and wishes of the people of India, but confidently declaiming in their name. We have reason to hope that it is now the policy of Government to give us as much influence as possible in the management of our own affairs. With further progress in this direction we may hope that the stump orator's occupation will be gone. Anything that strengthens the hands of the Government of India will, I am satisfied, be a gain to this country, and nothing will effect this except the support of a body of enlightened Indian public opinion. With this behind them our Government may disregard all the clamour of interested agitators.

" Concerning the budget proposals then I have little to say. The estimates of income appear moderate, and I think there is reason to hope they will be exceeded. The expenditure proposed in the estimates does not suggest to me any special remark. The Hon'ble Member proposes to borrow 2½ crores of rupees in India, and I think it right to say a word on the subject of loans. We have the choice of borrowing silver in India or gold in England, and I wish to give my reasons for thinking that the former is a most wasteful and extravagant course. We can borrow gold at 3 per cent., and we have to pay 4 per cent. for silver. There can be but one reason for preferring the latter course, and that is the prospect of such a decline in the value of silver as shall deprive us of the benefit of this difference in interest. Now, if it be desirable to insure ourselves against the risk of a decline in silver, is this a reasonable premium to pay? The difference is one-fourth of our interest charges. If we borrow gold, we will effect an economy unless and until the value of the rupee falls below one shilling. Now would it not be much better to borrow on the cheaper terms even if we thought it right to accumulate the saving of 1 per cent. in the form of a sinking fund? Such a fund would in forty years extinguish the whole debt. In considering this important matter it should be borne in mind that the ruling difference of interest, payable on gold and silver respectively, is not principally regulated, as my hon'ble friend has assumed, by the prospect of a change in the relative value of the precious metals. That consideration may operate in some degree, but the greater part of the difference arises from other causes. An Indian gold loan is, next to consols, the highest form of security known. It is admirably adapted for the investments of trustees, who desire above all

things to hand over the full amount entrusted to them on the expiry of their office. Such investors naturally object to a silver loan, because the rate of interest obtained is to them of no importance compared with the absolute integrity of the principal. Again, the banker who has to invest money deposited with him at call can find no more appropriate investment than an Indian gold loan. If he requires his funds he can sell his stock at once with perfect ease and without any sacrifice. This consideration is to him of far greater importance than the rate of interest obtained. Thus by borrowing in gold we obtain our funds from that limited class of investors who are content with low interest for the sake of high security. But when we borrow silver, although the capitalist is usually in England, he is commonly of a somewhat different class. He is content to accept the risk of certain fluctuations in the value of his security, but he looks for higher interest. I am satisfied that it should be the object of the Government of India to raise their loans in that form which is most acceptable to those investors who are willing to accept the lowest rate of interest for the sake of obtaining security that suits them. Nor am I afraid, my Lord, of the logical conclusion of this argument. I wish the Government would consider the desirability of converting their silver loans into gold loans, with the object of saving a crore per annum in interest. If spread over the next ten years such an operation would enable the Government to reduce the amount of their Council Bills and would bring a larger flow of silver bullion into the country. I can honestly say that in my opinion any private interest would be managed in this way. My hon'ble friend has views of his own about the effects of the fluctuations of exchange. Nothing will serve him except the fixity of exchange at its present point. He is apparently as apprehensive as I am myself of the evil consequences of a rise in exchange; but, on the other hand, he seems to me needlessly afraid of a fall. I cannot wonder that a Finance Minister should fear the disturbing effect upon his budget of a fall in exchange, but this need not alarm the country, if, as could be proved, the people gain far more than the Government loses. The hon'ble member draws attention to the fact that the gold price of silver and the gold price of commodities have fallen in similar proportion. He assumes a necessary connection between the two, but he does not attempt to distinguish which is the cause and which the effect. Those who voted with him on the Currency Commission were very confident that the decline in the value of silver caused the fall in the value of commodities. I do not understand that my hon'ble friend takes up this position, and I am therefore relieved from the necessity of attempting a refutation.

"I heard with pleasure his loyal defence of his predecessor in office from the rash attacks of would-be reformers of our liquor laws. The defence appeared to me absolutely satisfactory. Mr. Westland was well understood at the time to aim at an increase of revenue by the stricter enforcement of the claims of the excise, the natural consequence of which would have a restrictive effect on the consumption of ardent spirits.

"The Hon'ble Finance Minister referred to complaints that Government does not place its reserve balances at the disposal of the Presidency Banks. These complaints have as usual been put forward in the name of the public, but I know not with what authority. To the best of my knowledge the complaints are not supported by the majority of those qualified to express an opinion. For myself, I may say that it would be suicidal policy for Government to place at the disposal of trade funds which it may at any time require at the shortest notice.

"If these balances were available to the public, they would be absorbed by the Exchange Banks and used in the purchase of sterling bills. The object of the Exchange Banks is naturally to make money. When it suits them they will remit to England not only all their own funds but all they can raise by borrowing. If Government, in consequence of any sudden call for funds in India, was obliged to stop drawing Council Bills, it might be impossible for the Exchange Banks to bring out funds soon enough to meet the requirements of trade, and a ruinous crisis must result. The experience of 1886 should be sufficient warning. The Exchange Banks in that year obtained large advances of Government money from the Presidency Banks which they remitted to England in the form of trade bills, and by declining to purchase the Secretary of State's bills in London caused a violent fall in exchange. When the Presidency Banks stopped lending, the Exchange Banks were obliged to rush for the means of remittance to India, and exchange rose 10 per cent. If the Government of India had required money at that moment for any special purpose, a panic and crisis would have been inevitable. I am confident that public opinion will support Government in the determination to keep its balances in its own control.

"I now venture to offer some remarks concerning the policy which should guide us in our construction of productive public works. In the first place, it is obvious that, however much we appreciate the value of railways, our action must be guided rather by relative than positive considerations. We must first make up our minds as to the capacity of the country to bear taxation

before we can resolve upon expenditure. An expected benefit from expenditure may not be commensurate with the injury done to the people by additional pressure of taxation. On the other hand, a narrow economy may be the worst policy, if the wants of the people are urgent, and if the condition of the country enables it to bear initial expenditure in the expectation of an adequate return. The first position then which should be established is to lay down with as much accuracy as possible the economic condition of the people. We hear a great deal about the poverty of India. That the majority of the people are poor none will deny; but it is fair to enquire whether they are poor in comparison with their wants. I believe they are not poor in this sense of the word. I believe that the sensational story that fifty millions of people are insufficiently fed is absolute nonsense. I believe that in comparison with the population there are more people in England than in India who find it difficult to procure the necessaries of life. I find that all over the country wages are steadily advancing—much more rapidly than the cost of living. I find that small agriculturists are prospering as they never did before. Manufacturing industries are slowly but surely extending. I find a proof of the prosperous condition of the people in the absorption of specie. We are coining silver at the rate of ten crores annually, but it all finds its way to the interior in payment for produce, and never comes back again. Then, if the country is more prosperous, is it more highly taxed than formerly? By no means. The amount of revenue obtained from the people has increased in smaller proportion than the population. Is it then true, as is constantly stated, that the extreme limit of taxation has been reached? I do not hesitate to state that such an allegation rests on no foundation whatever, but is either wilfully or ignorantly untrue. The pressure of taxation on the people is lighter than it ever was before. This is no reason for expending more money than is necessary. It is no justification for extravagance, but it is for the advantage of the credit of the country that the truth should be known. We are in a position which justifies our borrowing money for the development of our resources, provided always that in any expenditure we incur we are clear that we get value for our money. I am glad to know that some advance is at last being made in the construction of railways by private enterprize without the guarantee of interest, and I trust the Government will do all in their power to foster it in every way. But applying what I have said about the condition of the country, I would say that, if the Hon'ble Public Works Member has on hand any schemes for the extension of paying State Railways, I would recommend Government to push them on at once with borrowed money, in perfect confidence that they will receive the support of public opinion.

"The interesting part of the Hon'ble Sir David Barbour's speech which dealt with our financial prospects in coming years will give food for satisfaction to the country. We have now broken the back of the huge expenditure devoted to frontier railways and defensive works. Our expenditure in Burma promises to decrease rapidly, and our ordinary revenue is rapidly increasing with the advancing prosperity of the people. There is reason to hope that before long we may have to face the agreeable problem of choosing such form of remission of taxation as shall confer the greatest benefit on the country. I am not going to weary the Council by repeating what I said last year on the comparative merits of various claims for remission. But I must warn the Government that a reduction of the salt-duty should not be the first object, as there are far more pressing claims. The Secretary of State is understood to have said that he was sure the Government of India would take the first opportunity of reducing the salt-duty to its old level. I have no complaint to make of this dictum, provided it means that this remission shall come in its proper turn. But I earnestly beg the Government to consult the wishes of the Indian people before they adopt the advice of some who unwarrantably speak in their name. When the time for remission comes give us the opportunity to prove our case before an irrevocable decision is arrived at. We ask nothing more."

His Honour THE LIEUTENANT-GOVERNOR said:—"I had not intended in any way to take part in this debate, but some remarks fell from my hon'ble friend Mr. Evans on the subject of the administration of civil justice in Bengal which seem to call for a few observations on my part. I rather wish to deprecate the idea which he has gathered from some paragraphs in the newspapers on the subject to the effect that there has been a serious triangular duel going on between the High Court, the Government of Bengal and the Government of India. There had undoubtedly been a difference of opinion, but what happened in the particular case was this. The hon'ble Judges of the High Court pointed out some time ago that the Munsifs as a body were very much overworked, and that the buildings in which many of them performed their functions were inadequately ventilated and insufficient in space; and finally, after some correspondence in the time of my predecessor, the Government of India asked the Judges of the High Court definitely what they wanted, and in reply they stated that they wanted an addition of sixty-six Munsifs. The Government of Bengal examined the question, and, admitting freely that a considerable increase in the number of Munsifs was wanted, requested the Government of India to

appoint a commission to examine whether, by changes of jurisdiction or by any other method, such a very large increase, amounting to about 25 per cent., might not be avoided. In making this recommendation I observed that if my recommendation was not accepted, that if something had to be done without such an enquiry, I would suggest a number something smaller than what the High Court proposed. However, the Government of India did adopt my recommendation; they appointed a committee of enquiry, and pending the result of that enquiry they authorised a limited number of additional Munsifs to be appointed. But the number so allowed was merely a temporary provision pending the result of the enquiry, and it does not, as I understand it, in any way determine what the ultimate increase of establishment should be. The arrears, as my hon'ble friend observed, are still there: the commission will not try cases and will not bring down the number; but they are not at present heavy; they do not amount to the number instituted in any single quarter; and I think that the result of a careful enquiry will probably be well worth both the money and the time it occupies. I do not propose—however, because I have not the means to do so—to follow my hon'ble friend's remarks about the surplus of receipts over expenditure under this head. The question is one with which only those who have the finances of the whole empire in their hands can deal. There is unquestionably a surplus in Bengal, though I am not by any means sure that there is a considerable surplus in the provincial part of the receipts. But whether there is a surplus at all in the whole of India is a different question, and it was to this question that the Hon'ble Mr. Westland addressed himself in the discussion which took place in the Council last year.

"I have only one other remark to make. I understood the Hon'ble the Finance Member to say that with scarcely any exception the Local Governments had been able to pay their contributions to the imperial revenues on this occasion without any difficulty. I can only say that in Bengal the contribution was given cheerfully, but certainly not without difficulty. It was felt that it was an obligation to be met, but owing to circumstances which were for the most part temporary, and which landed us in heavy expenditure, we assuredly found it a matter of exceeding difficulty and inconvenience to make the contribution."

The Hon'ble MR. HUTCHINS said:—"With regard to the condition of the Civil Courts in Bengal, and the action of the Government of India in allowing, as a provisional measure, a smaller number of Munsifs than was asked for, His Honour the Lieutenant-Governor has given the explanation which I intended to

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give. I only wish to add, though I am unable to give the figures, that there are many indirect charges connected with civil justice which, if taken into consideration, would show that the State derives no real profit, or, if any, at all events a very slight profit, from litigation."

The Hon'ble SIR CHARLES ELLIOTT said:—"My hon'ble friend Rájá Durga Charn Laha in his interesting speech gave just credit to the Government of India for a desire to reduce expenditure under all heads as much as possible, but he hinted that there were still some reductions which might be made in the Public Works Department. I think it may be interesting as well as useful to the Council if I should, as briefly as possible, make a few remarks as to the nature of the expenditure in that Department, and how far we have been able in recent years to effect economies. The expenditure in this Department is divided into three main divisions, namely, Railways, Canals, and Roads and Buildings, and the expenditure in each of these may again be divided laterally into the three heads of Working Expenses, Construction and Establishments. With regard to railways the largest item in the expenditure of the Department is the working expenses of open lines, and that is an expenditure which must necessarily increase as the number of open lines and their mileage increases and as new railways are made and worked. The demand for new capital outlay on these lines is also an item which tends to grow in the most insidious way; but there is no branch of expenditure to which greater care and attention have been taken to keep it down. Demands for new and ever new improvements and additions come up from all railways calling for increased allotments more vigorously than in any other branch of the Department. I may mention here the name of a very distinguished adviser of the Government of India who has just retired from Government service, Sir Guilford Molesworth, who had a perfect passion for economy in this direction. Many years ago he laid before Sir Evelyn Baring a proposal for closing the capital account of all railways when they had reached a certain degree of completeness, and recommended that all further expenditure connected with them should be charged to revenue and not to capital. A few months ago I had a list of all the previous year's demands for expenditure on open lines classified and laid before Sir Guilford Molesworth, and I asked him whether there was any one item in it which ought not to be granted, and he said that it was not possible, with due regard to the maintenance of those railways and to the increase to their revenues which such improvements might be expected to bring in, to refuse in a single case the money which was required. I mention this to show how vigilant we are in scrutinizing expenditure

and how impossible it is to keep it down and at the same time to keep pace with necessary improvements.

"The working expenses of canals are in the same class. They must be kept up, and, as the number of miles of canals and their distributaries increase, the expenditure must increase. But in all these cases there is a per contra in the revenue which comes in from them, and it would be found that, except in a particularly bad year, such as 1887-88 had been for railway traffic, the growth of the revenue more than kept pace with the expenditure.

"Again, with regard to the construction of new canals and railways, I would point out that in each of the last three years about 50 lakhs have been laid out on canals, and 50 lakhs is the sum budgetted for this year. This amount is devoted partly to completing works under construction and mainly to three great canals. One of these is the Periyar canal in the Madras Presidency. The able Irrigation-officers of Madras have urged—and they afford excellent evidence to show—that this canal will not only preserve the Madura district from famine and failure of water but will also bring a large return to the treasury. Two other canals are in the Punjab and are intended to irrigate tracts to which special attention was drawn by the Famine Commission as requiring protection. In both of these there is absolute certainty, as far as there be any human certainty and prevision, that the water will bring in a large return and greatly increase the area under cultivation and give room for the expansion of the constantly growing Punjab population. I am sure that what we are doing in the way of construction of canals fully meets the canon laid down by the Hon'ble Mr. Steel. I am not so sure that what we are doing in the way of construction of railways meets his canon. In the present year we have provided 356 lakhs under this head. Of this the larger part is devoted to carrying on and completing the works in hand and which could not be possibly stopped. There are only two new railways which have been taken up within this year. One is the Mu Valley Railway in Burma, an extremely important work which is required on military and administrative grounds in order to get access to a part of the country which now from want of roads and communications is difficult of access and without which the Chief Commissioner feels it would be impossible for him to undertake that we shall be able to hold our ground against outrages and disturbances. The second is the famine railway in Madras, which runs parallel on the eastern side to the Madras Railway and opens access to a large tract of poor country in which in 1877-78 famine raged with extreme virulence, where the people were poor and the nature of the country makes it hard to

make roads. The Famine Commission urged the necessity of this railway, and both this Government and the Government of Madras have long had it under consideration, and have strongly recommended it as a most important work, and, I am glad to say, the Secretary of State has sanctioned its commencement during the present year.

"There are in the list of projects no paying State Railways, and, with regard to what the Hon'ble Mr. Steel said on this subject, the only thing I have to say is that we find ourselves limited by instructions received from the Secretary of State, that more cannot be spent than can be conveniently and properly raised by loans in this country. The Finance Member has stated what this amount is, namely, from 2½ to 3 crores, and more than this cannot be raised in the course of the year for railway construction.

"The third item of Public Works expenditure consists of the construction and maintenance of roads and railways, and appears in the Budget under the head of Imperial Civil Works. There has been a considerable reduction under this head during the last three years. The allotment consisted in 1886-87 of 89 lakhs, the year after of 77 lakhs and the present year of 64 lakhs; that is to say, there has been 20 lakhs of reduction on expenditure. Of the 64 lakhs, 30 lakhs go to Burma, and that sum has been expended during the last three years. That leaves only about 30 lakhs, and even of this 10 lakhs are allotted for expenditure in England, mainly on the furlough pay of officers. This leaves a small and irreducible minimum of 20 lakhs for the whole of the territories which are not under the orders of any Provincial Government but are directly administered by the Government of India, together with the expenditure on the great departments of the post and telegraphs. When you consider what we have to do in these two departments and the wants of Coorg, Rajputana, Hyderabad and Baluchistan, I think you will admit that the sum of 20 lakhs is exceedingly small and further reduction is not possible.

"The fourth branch of expenditure is Establishments. It is a very large item of expenditure, and it is very difficult to deal with it. The establishment necessarily has to come down in numbers as expenditure on public works is reduced. The Government of India is doing all in its power to reduce the establishment, and yet at the same time it is bound to do justice to the able and highly efficient officers who compose the higher branches of the department. We have lately obtained the sanction of the Secretary of State to a large decrease in the annual recruitment of officers for the Public Works Department, and certain steps have

been taken to induce officers to retire earlier than they need otherwise do in order to relieve the Government of the necessity of finding posts for them. This is a subject which has given us a great deal of anxiety, and I can assure the Council that no pains have been spared to keep down expenditure under this head.

"I think that with this explanation before them hon'ble members will agree that we are doing all that is possible to avoid any unnecessary expenditure in the Public Works Department."

The Hon'ble SIR DAVID BARBOUR said:—"My Lord, I need hardly say that the suggestions and criticisms on the Financial Statement which have been offered to-day will receive the fullest attention on the part of the Finance Department, and I have no doubt they will be productive of valuable results.

"It cannot be expected that there should be complete unanimity of opinion on all the difficult and complicated questions connected with Indian finance, but there is a greater degree of agreement than I had anticipated.

"There are only a few matters in regard to which I think it necessary to make any remarks. The Hon'ble Mr. Evans has alluded to the alleged surplus from the administration of civil justice in Bengal. My hon'ble friend did not profess to be very confident about the amount of this surplus, and I am afraid I am to some extent in the same position. The calculation of the surplus or deficit is an extremely intricate one, and, though considerable attention has been paid to the subject, I am afraid the results are not perfectly trustworthy. I understand that my hon'ble friend would not include the receipts from the probate and administration duty or from the fees on succession certificates among the receipts of civil justice, and if so the surplus in Bengal would probably not exceed thirteen lakhs of rupees yearly. In Madras there is an equilibrium, or nearly so, and in every other province there is a deficit. In the Empire as a whole there is a deficit of considerable amount. I will look into the figures again, and, if it should appear that some reliance can be placed on them, I will, with Your Excellency's permission, propose that they be published in the Gazette of India. My hon'ble friend has also called attention to the expediency of a reduction in the Home charges. It may perhaps be useful if I briefly explain the nature of these charges. The public are apt to look at their total amount, and to assume that these charges are capable of reduction merely because their amount is large. Owing to the method of administration of this country a large number of bills are drawn by the Secretary of State for India which in the case of other

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countries would be drawn by private persons and would therefore escape observation. A portion of the drawings of the Secretary of State is intended to meet the cost of stores required by the Government in India. I see no way of reducing this charge unless somebody can be found who will supply stores for nothing, and that is a contingency which we need not consider. A very large portion of the drawings represents the interest on capital invested in railways and other public works in India. Some of that capital has been raised at a little over 3 per cent. per annum, a large portion at 3½ per cent. per annum, and another portion at 4 per cent., while the capital of the older Guaranteed Companies was raised at 5 per cent. per annum. On the whole the capital has been raised at a very moderate rate of interest, and India derives great benefit from the public works in which it has been invested. I see no means of reducing this portion of the Home charges unless we are prepared to repudiate our obligations while retaining all the benefits for the sake of which they were incurred. This is a course which, it is needless to say, my hon'ble friend would not recommend. There remain the administrative and military charges, which, speaking from memory, I would put at about £7,000,000. If my hon'ble friend or any other member of this Council can point out any way in which these charges can equitably be reduced, I shall feel it my duty to give him every support, and I am sure Your Excellency's Government will not fail to press the question with all the authority which the Government of India can command.

"My hon'ble friend Syud Ameer Hossein has made a plea for some relief to the payers of income-tax, and especially for those whose incomes are less than R1,000 per annum. So far as regards the wealthier members of the community, I think the claim for relief is very weak. I doubt if there is any other country where the taxation falls so lightly on such classes as it does in India. I would ask my hon'ble friend to consider what taxation he and I and the other official members of Your Excellency's Council contribute towards the cost of the government of this country. If he does, I think he will be astonished at the moderation with which taxation is imposed in this country. And the argument holds good in the case of the commercial and professional classes as well as in the case of the official classes. I admit that there is more to be said for the exemption from the income-tax of persons whose income is less than R1,000, but even in their case the plea for exemption appears to be by no means a strong one. In the first place, as incomes rule in this country, an income of even R500 a year is not low relatively to the incomes of the vast majority of the people. In the next place, the persons whose

incomes are between R500 and R1,000 would pay little or nothing towards the expenses of the State if they did not pay the income-tax. And, last of all, we cannot do without the money, and I do not at this moment foresee the time at which we will be in a position to say that this class has the first claim to relief.

"The Hon'ble Rájá Durga Charan Laha has referred to the contribution of 74 lakhs for next year from Local Governments and appears to hold that the resources of those Governments have thereby been crippled. I do not know what foundation my hon'ble friend has for that statement. I am happy to say that, even after making their contributions, the resources of the Local Governments of Bombay, Madras and Lower Burma are ample.

"The Central Provinces and Assam make small contributions which do not press on them with any severity, and the only province which is in any way straitened is Bengal. No doubt it has been found necessary to re-impose the patwari-cess in the North-Western Provinces and Oudh; but, after all, that only amounts to replacing a burden which had been borne from time immemorial up to 1882. And the whole cess has not been re-imposed. The zamindars and raiyats of the provinces in question have been relieved to the extent of one-third of the total amount required. It is a fact that the taxation in Bengal is far lighter than in any other province of the Empire; and Madras, Bombay and the North-Western Provinces and Oudh complain loudly—and I think with some justice—that Bengal escapes her fair share of the State burden. In these circumstances, it is with some surprise that I have heard my hon'ble friend as a representative of Bengal complain of the burden of taxation and propose to abolish the income-tax, which is really the only means we have got of making the professional, the commercial and the official classes contribute anything worth mentioning to the expenses of the State. My hon'ble friend apparently would contemplate with equanimity the remission of the rice-duty in Bengal while retaining it in Burma. I cannot believe that when he made that suggestion he was aware that Bengal is the most lightly taxed province of the Empire in proportion to population, and that Burma is the province which pays the highest rate of taxation. My hon'ble friend has alluded to the increase of revenue by 16 crores in the last eight years, but he has not noticed, as I think he ought to have done, how much of that increase is due to traffic receipts on new railways and to the purchase by the State of lines formerly owned by Guaranteed Companies.

"I am sorry to have to say that I do not agree with my hon'ble friend either as to the income-tax or the duty on salt. The salt-tax is a tax on

a necessary of life and falls with almost the same weight on the rich and on the poor. No doubt the salt-tax has its advantages in some respects: it is easily collected, it is productive, and its incidence is spread over a wide area, but the lower the rate of duty can be kept the better from every point of view except the purely financial one.

"I have already dwelt on the question of the income-tax in replying to the remarks of the Hon'ble Syud Ameer Hossein, but I may add that it is with great regret that I have heard the Hon'ble Rájá Durga Charn Laha propose the abolition of the income-tax while retaining the salt-duty. I do not doubt that my hon'ble friend is thoroughly sincere in his opposition to the income-tax, and that he considers it unsuited to this country; but the practical effect of his proposals would be to make the rich richer and the poor poorer, though the wealthy members of the community whom he proposes to relieve are those who gain most by the Government and contribute least to its support in proportion to their means.

"I think it would be an injustice so gross as to amount to a scandal if the Government were to take off the income-tax while retaining the salt-duty at its present figure.

"The Hon'ble Mr. Steel has made some remarks on the question of exchange which show that he is under a misapprehension as to my views— a misapprehension due, I dare say, to my not having made my meaning sufficiently clear. It is not the case, as my hon'ble friend supposes, that I would be satisfied with nothing but fixity of exchange at the present point, nor is it the case that I am as apprehensive as he appears to be regarding the evil effects of a rise in exchange. I will quote again the words which I actually used at the last meeting of Council—

'In the interests of India a sudden reversion to the old ratio of 1 to 15½ brought about by the action of foreign countries, and the continuous and progressive demonetisation of silver, accompanied by a fall in the value of the rupee to an unknown and unlimited extent, are alike to be deprecated.'

"I am afraid in the interests of India of a sudden and violent reversion to the old ratio of 1 to 15½ brought about by alterations in the currency laws of foreign nations, but I am not apprehensive as to the effects of a gradual and moderate rise in exchange. So far from being apprehensive of the ill effects of any rise in exchange, I should welcome a rise of a penny or two in the value of the rupee during the coming year as an unmixed blessing, and I do not

think that even my hon'ble friend or the important class he represents would view such a change with either apprehension or regret. I admit that I am afraid of the results of a further fall in the value of the rupee of unknown magnitude. We have used up a great many of our resources during the last five years in meeting the fall in exchange, and, if I thought the fall was likely to be as great during the next five years as it has been during the last five, I should take a much more gloomy view of our position than that which I expressed in the Financial Statement.

"For the reasons I have stated I am in favour of prudent, gradual and well-considered measures being taken to relieve us from our present difficulties and from the dangers of the future, and I am of opinion that the measures should be such as will secure the object aimed at with a minimum of disturbance to existing interests. I know no means of achieving this result except by international agreement.

"The Hon'ble Mr. Steel has also expressed a strong opinion that to borrow in silver instead of in gold is a most wasteful and extravagant course. He says that there can be but one reason for preferring the former course, and that is the prospect of such a decline in silver as shall deprive us of the benefit in interest. I do not think that this is quite a fair statement of the case, and my hon'ble friend somewhat over-states the advantages of borrowing in gold. The difference in the rate of interest at the present moment is no doubt very great, but I think that difference will diminish, and my hon'ble friend does not seem to attach sufficient weight to the burden of having to repay the principal of the gold debt after a fall in the value of the rupee. I freely admit, however, that an arithmetical calculation shows that the gain from borrowing in gold is sufficient to balance the loss from a very great fall in silver in the future—a fall so great that I sincerely trust we shall never witness it. But I cannot admit that the question is merely one of arithmetic. It is contrary to sound principle for a country to incur obligations in any standard other than its own—a principle which we have already violated to a greater extent than is either prudent or safe. In recent years we have practically borrowed very largely in gold, and will do so in the coming year, by guaranteeing interest payable in gold on capital raised in England for the construction of railways. During next year the Secretary of State proposes to raise no less than £3,750,000 in London on this account. And if a severe famine occurred, as it might at any time, I have no doubt that money would have to be borrowed largely, and that it must be borrowed in London.

"The Government is incurring heavy expenditure on military preparations, and I understand that their policy has the support of my hon'ble friend. There would be no justification for such expenditure if a great war were not at least a possibility of the future. The money for a war of this nature could not be borrowed in India, and must come from England, and there is no doubt but that the amount required would be very great. Looking then to the fact that we have already incurred heavy gold obligations, that we are at this moment borrowing largely in gold, that we may have to borrow still more largely in this way, and that we know nothing of the future relative value of gold and silver, I think it is only a matter of ordinary prudence that in a time of peace we should incur some loss in order to avoid adding to what is already a cause of embarrassment and might become a source of danger. Both from a political and an economic point of view there are great advantages in raising money in India. It will be in the recollection of this Council that some time ago we obtained a loan of $3\frac{1}{2}$ crores of rupees from the Gwalior State. The interest on that sum comes to fourteen lakhs of rupees yearly. Every rupee of that amount is pure gain to India; there is no portion of the Indian expenditure which I contemplate with greater satisfaction; and, notwithstanding the criticism of my hon'ble friend, I should be very glad to hear that other States were prepared to lend on the same terms.

"In this respect I am in entire agreement with the Hon'ble Durga Charn Laha as to the expediency of keeping down the Home charges."

His Excellency THE PRESIDENT said :—

"It will not be necessary for me to occupy the time of the Council for many minutes, but there are one or two observations which I should like to offer before this discussion closes. It has been an unusually short one, but the speeches which have been delivered afford an excellent illustration of the advantage to be derived by the Government of India, and by the public, from the practice of affording to the Legislative Council every opportunity of considering, reviewing and criticising the financial proposals of the Government. The ultimate responsibility for such measures must no doubt remain with that Government, but that responsibility will certainly sit more lightly upon our shoulders if we know that our proposals have been framed in such a manner as to stand the test of examination and criticism by our colleagues at this table.

"It has, I believe, usually been held that the terms of the Act by which our proceedings are governed preclude such examination except when

the financial arrangements for the year involve legislation in Council. I will not pause to inquire how far this view is borne out by the letter of the Indian Councils Act. It has certainly been borne out by the persistent interpretation which has been placed upon the Act both here and by different Secretaries of State. A case is, I understand, upon record in which a Viceroy drew upon himself the censure of the Secretary of State for having permitted a discussion of the Budget without the pretext that it was connected with one of the Bills brought before Council during the session. The result has been that the Legislative Council has or has not been able to discuss the Budget according as it was or was not connected with some change in the laws of the country, and it has thus come to pass that during the last twenty-five years the Budget has been discussed in Council upon twelve occasions, while in the remaining years no such discussion has been allowed to take place.

"This seems to me, I must say, an altogether incongruous and inconvenient arrangement, and I feel little doubt that, as far as the present year is concerned, hon'ble members will share the opinion of my hon'ble friend and will approve of our action in taking advantage of the passage of the Bill which we are now considering, and which to some extent touches the fringe of our financial arrangements, in order to lay before Council the whole of our scheme for the financial administration of the coming year. This course is one which entirely commends itself to my judgment, and I am glad to express publicly my opinion that the opportunities accorded to the Legislative Council for passing under review the financial situation of the country should occur with regularity, and should not depend, as they depend at present, upon what is after all a mere accident—I mean the necessity of financial legislation in any particular year.

"Hon'ble members are no doubt aware that this question has been for a long time under the consideration of the Government of India, and that the view which I have just expressed was strongly entertained by my predecessor, who felt it to be his duty to make a representation upon the subject to the Secretary of State. Since my arrival in this country I have followed the matter up with the entire concurrence of my hon'ble colleagues in the Government of India, and I am glad to say that Lord Cross has given his cordial adhesion to the proposition which I have just advanced.

"The arguments in its favour appear to me, I must say, conclusive, and they are supported by a great weight of authority, including, I believe, that of all the principal Chambers of Commerce of India.

"I remember being much impressed at the time by an observation from my hon'ble friend Mr. Steel on the introduction of the Bill now before us. If the imposition of a new tax is a matter worthy of discussion at this table, it is, I think, quite true that, as he observed, the remission of an old tax is equally worthy of such discussion. I can conceive no pretext upon which it could be held that in one case discussion is desirable, and in the other inconvenient or unnecessary. It seems, indeed, to me that if a distinction is to be drawn, if the criterion is to be the public importance of the step, the remission of an old tax may often require more careful discussion than the imposition of a new one. The imposition of a new tax is pretty sure not to be resorted to without sufficient consideration. The measure is bound to be unpopular with some one. It is sure to provoke criticism, and it will certainly be narrowly scrutinised both by those who impose the tax and by those upon whom it is imposed. The abandonment of an old tax is, however, a very different thing. The Exchequer may be overflowing at the time: the remission is agreeable, both to those who make it and to those who profit by it: the temptation to be liberal, to spend the money while you have got it, is strong: every one is pleased: and it thus comes to pass that by a stroke of the pen a permanent source of income is lost or alienated, without that consideration to which a step so momentous is entitled.

"Even, however, if the Budget involves neither the imposition of taxation nor its remission, but merely the retention of existing taxes, it does not appear to me that we are therefore relieved from the duty of taking Council into our confidence. The proposal to retain an existing tax may, under certain circumstances, be as fairly open to question as the proposal to remit taxation or to impose it. Every Budget involves proposals falling under one or other of these three heads, and the conclusion appears to me to be irresistible that it is for the public convenience that, under whichever category the proposals contained in the Budget of any given year may happen to fall, those proposals should be submitted for your examination here.

"Another consideration leads me to the same conclusion. Financial criticism, if it is to be valuable, should be as continuous as the financial policy which it criticises. The financial history of a country is uninterrupted; so should be the watchfulness of those who are entrusted with the duty of passing it under review. It seems to me almost an absurdity that it should depend upon the mere accident of the introduction of a Bill whether that review

should take place or not. Such a review should extend not only to the past and to the present, but to the future, with its prospects and possibilities. Perhaps no advice is more valuable than that which has reference to the remoter future. The income and expenditure of the past year are beyond recall, and at the time when the Budget is framed it would be extremely difficult for the Government to recede from the arrangements which it has made for the year which is just about to commence. In regard, however, to the years which lie beyond, the Government of India is not committed to the same extent and is still in the position to profit by useful suggestion and advice. I welcome in this spirit that which has been given to us by the hon'ble members who have placed upon record their opinion as to the course which should be adopted in the event of our being hereafter in a position to remit taxation. I trust that they are right in anticipating that we may, before we are much older, find it to be our agreeable duty to consider what burdens we can remove from the shoulders of Her Majesty's subjects in this part of the Empire; and I can promise them that, should the Government of India, while I have the honour of being connected with it, find itself in the happy position of being able to dispense favours, we shall be careful to do so with the utmost circumspection and with a due regard to the arguments which they have advanced.

"I mentioned just now that the Secretary of State had expressed his concurrence in the proposal that there should be an annual, instead of an occasional, discussion of the Budget in Council. I may perhaps take this opportunity of mentioning that this subject appears to the Government of India as well as to the Secretary of State to be closely connected with another—I mean the propriety of giving to members of the Legislative Council of the Government of India, under proper safeguards, the right of addressing questions to the Government upon matters of public interest. I am in a position to state that we are in favour of a change in this direction, and that this question is also engaging our attention and that of the Secretary of State. I make this announcement, however, subject to two important qualifications. It will, in the first place, be necessary to ascertain clearly whether the law, as it now stands, permits the course which we should like to adopt, and, if it does not, how it should be amended. In the next place, it will be necessary effectually to limit the right of interpellation in such a manner as to preclude absolutely all questions which could not be put without injury to the public interest. This is a point of the utmost importance, and will require the most careful examination.

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"The case of the Bill before us shows how much easier it is to surrender a source of income than to get it back again. The evidence adduced has demonstrated that the remission of the patwari-cess failed to have the effects anticipated from it, while it involved the sacrifice of a large annual revenue. We have now to be content if we can recover for the public a part of the resources which we then abandoned. We shall also, I am afraid, be compelled to admit that, to some extent at all events, it may prove beyond our powers to distribute the incidence of the re-imposed burden between landlords and tenants with absolute fairness. It is difficult to disprove the statement that the new law may involve a certain degree of apparent hardship to those tenants who obtained no benefit from the remission of 1888, and who, having, upon that occasion, failed to obtain any relief from the taxation to which they were then liable, may now find that under this Bill a new burden is imposed upon them. We may, however, I think, take for granted two facts,—first, that any attempt to deal exceptionally with these apparently hard cases will involve the creation of a much greater number of much harder cases. I have little doubt that, as was stated in 1884 by Sir Alfred Lyall, 'it is impossible to resolve existing rents into their original component parts and to lay down what portion of them represents the old patwari-cess'; and I am also afraid that any attempt to exempt tenants with occupancy-rights from the new impost would involve the infliction of what would certainly be regarded as a grievous wrong upon the tenants-at-will, whom we could not protect and who occupy nearly one-half of the total area of these provinces. In the next place, it seems to me that considering the smallness of the rate for which the tenant is liable to be called upon,—a rate which cannot exceed, speaking in round numbers, one per cent. upon the annual rent of his holding,—considering also the fact that the tenants as a body have a large interest in the effectual performance of the services rendered by the patwari, the grievance, if indeed it be one, is of infinitesimally small proportions.

"I will say one or two words only as to the Financial Statement of my hon'ble friend and the observations which have been made upon it. That statement appears to be one which we can contemplate, if not with positive satisfaction, certainly with the feeling that much worse things might have befallen us. During the course of last summer my hon'ble friend and I were in constant personal communication with the Secretary of State and with other persons regarded as high authorities upon Indian questions. I think

that at that time we should all of us have been extremely gratified if there had been reason to anticipate that my hon'ble friend would be able to show so satisfactory a condition of things either in respect of his anticipations for the Budget of next year, or in regard to the accounts of the year which is about to close.

"That he should have been able to do this is partly due to circumstances which we can regard with unmixed satisfaction. The downward course of the gold value of silver has for the moment been arrested, and the elasticity shewn by the ordinary sources of revenue has, upon the whole, been satisfactory. On the other hand, I feel bound to express my regret that we should have found it impossible to establish a financial equilibrium for 1889-90 without again calling upon the Provincial Governments to contribute towards our necessities from the balances at their disposal. No one, whether an individual or a corporation, particularly enjoys treatment such as that which the Provincial Governments have lately experienced at our hands. It is treatment which I have heard described in terms which lost nothing of their severity from the fact that they were usually couched in allegorical language. The Council is well aware that it was the intention of the Government of India to achieve its purpose by a more ingeniously contrived and more plausible procedure than that which we actually adopted. The scheme for the assessment of the provincial contributions embodied in the well-known Circular of October 2nd of last year is within the recollection of hon'ble members. When I arrived in India that scheme still held the field, and representatives of the principal Provincial Governments had been invited to meet the predecessor of my hon'ble friend in this city and to confer with him in regard to the proposals therein contained. The conference took place, and it disclosed two most important facts. The first of these was that the Hon'ble Mr. Westland, after full discussion with the provincial delegates, came to the conclusion that some of the proposals, and amongst them those which had been regarded as the most important and essential features of the project, ought not to be insisted upon. We became aware in the next place that the representatives of the provinces very much preferred the simple and unscientific methods which my hon'ble friend has adopted to the more elaborate and ingenious procedure by which the Government of India had designed to place the provinces under contribution. Under these circumstances one course only was open to us. My hon'ble friend had but lately assumed the duties of his

important office. I had myself only been a few weeks in the country, and we were, under the circumstances, both of us entitled to ask that any attempt to dispose finally of this important question should be, for the present, deferred. It seems to me that under these circumstances my hon'ble friend was amply justified in abandoning the procedure originally contemplated, and in giving up for the moment any attempt at a scientific re-adjustment of the basis of these provincial contributions and in resorting to an *ad interim* arrangement which would give him the ways and means which he required, but which would leave the much larger questions at issue still open for further review. I will add nothing to this part of my observations unless it be to express, with reference to the remarks which have just fallen from my hon'ble friend the Lieutenant-Governor, my sympathy with the Provincial Governments which have been called upon to submit to these sacrifices for the sake of the Imperial Exchequer. The balances upon which we have indented may in some cases have been due to the natural growth of the revenue; in others they may have been the result of careful and economical administration and of the wise husbanding of resources in view of the necessity of large expenditure on local objects of a useful character. The sacrifices which the provinces have been called upon to make have no doubt involved in some cases the abandonment of cherished schemes of local improvements, and we cannot expect the Governments concerned to submit to such a sacrifice without a murmur. We can only assure them that if the concession was disagreeable to them it was not less disagreeable to us to require it, and that we have asked them to submit to it upon a principle the soundness of which they will not dispute—I mean the principle that the solvency of the Indian Empire is a matter of interest to every part of it; that the finances of India must be dealt with as a whole; and that the relations of the Central and Provincial Governments should be such as to place upon the latter the obligation of sharing to the full the financial responsibilities and difficulties of the Empire.

"We are, however, I think, bound to ask ourselves whether it would have been possible for us to avoid these demands on the provinces or to remit any of the taxation which has recently been imposed by a retrenchment of our expenditure. I yield to no one in my conviction that watchfulness over our expenditure lies at the bottom of sound finance in this country, and I agree with what fell just now from the Hon'ble Rájá Durga Charn Laha when he dwelt upon the urgent necessity for exercising such watchfulness. But, although look forward to the time when it may become possible to keep that

expenditure within narrower limits than those within which it is at present confined, I am bound to say that it is not easy to point to any items in the estimate for next year in which an unreasonable demand has been made by the responsible Department.

"My hon'ble friend has dealt fully with the question of army expenditure. These estimates show no doubt a large excess over the estimate for the year which is just ending. I have had frequent communications with the hon'ble member in charge of the Military Department upon this subject, and I am bound to admit not only that its requirements do not appear to me to be extravagant, but that it has had, in deference to our necessities, to abandon more than one useful project which it might otherwise have pressed upon us.

"We must not allow ourselves to lose sight of the fact that since 1885 the number of troops in India has been increased by 30,000, and that the presence of so large an additional force in the country involves not only an increase under the head of pay but a large consequential expenditure under the head of barrack accommodation and other items.

"Then, again, we have an increased expenditure of £206,000 in England for new rifles and guns—an exceptional expenditure incurred for an object absolutely essential to the efficiency of the different arms of the service. We have besides a sum of 20 lakhs for the mobilization of our forces—an expenditure which I hope we shall none of us grudge, but which is also an unusual one. There is besides a very appreciable increase of expense occasioned by the higher prices which we have lately been called upon to pay for provisions and forage. A small extra vote has also been taken for the two sets of military operations at this moment in progress. This expenditure is also exceptional in character, although I am afraid that with our extended frontier we cannot allow ourselves to look forward in the immediate future to a time when such expeditions will become unnecessary.

"I would make one general observation upon this question of military expenditure. I trust that we may be far remote from the time when it may become our duty to make use of our military resources in actual warfare, but it is idle to conceal from ourselves that we may be called upon to do this, and that the call may be a very sudden one. It seems to me that a solemn obligation lies upon us to see that the defences

of this part of the Empire are maintained in a state of the highest efficiency. The recent tension and uneasiness which have prevailed upon the western frontier of Afghanistan afford a good illustration of the risks to which the public peace is exposed in that part of the world. I rejoice to be able to state that all the information in my possession is to the effect that nothing has been further from the thoughts of His Highness the Amir of Afghanistan than to provoke a collision, and that the measures recently taken by the Government of Russia were prompted not by any desire to court one but rather by the apprehension that the presence of the Ruler of Afghanistan on the frontier might lead to an outbreak of a kind which, even in the absence of any desire to foment mischief, arises too readily amidst the inflammable materials which are to be found in that part of the Asiatic Continent. That tension has, however, served to illustrate the precarious nature of the conditions upon which peace in this part of our borders depends; it is our duty under such conditions to maintain a high state of preparedness, and I trust that we shall not cease to do so, and that we shall not regard with too much reluctance the sacrifices entailed by such a policy.

"Great Britain is at this moment submitting to such sacrifices, upon a scale by the side of which what we are doing sinks into insignificance, with the object of strengthening herself to the point required by the huge armaments and vast hosts accumulated by foreign Powers. It seems to me that India may fairly submit to bear some share of the sacrifices thus imposed upon the Empire. The least that we can do here is to carry out promptly and effectually the defensive measures which the Government of India has already sanctioned. Nothing is more calculated to produce a mischievous and mistaken impression than any apparent breach in the continuity of our military policy. I am glad to learn that the defences of our north-west frontier are making satisfactory progress, and are approaching completion; that out of a total estimated expenditure of Rx. thirteen and a half millions assigned to frontier railroads, Rx. eleven and a quarter millions will have been covered by the end of the next financial year; and that we shall by that time also have paid for three out of five and a half millions of expenditure assigned to coast and frontier defences. In these matters a consistent policy and the rapid and uninterrupted execution of works, when once they have been determined upon, will, I am convinced, be found in the end to be the most economical course, and I was glad to hear my hon'ble friend Mr. Steel state as explicitly as he did that we might rely upon the support of public opinion in adopting that course.

"If this is the opinion of my hon'ble colleagues, they will, I hope, agree with us in believing that, under the circumstances which have been so clearly set forth by the Hon'ble Sir David Barbour, we were justified in not proposing to the Council any important changes in the taxation of the country and taking measures to secure for the coming year the small additional amount of revenue required in order to raise our income to the level of our expenditure.

"We may, I think, dwell with satisfaction upon a well-maintained increase in our land-revenue and in our receipts from Railways, Post Offices and Telegraphs—an increase which is likely to be sustained in years to come. Let me, in connection with this question of the increase of our revenue, express the satisfaction with which I listened to Sir David Barbour's effectual vindication of the Government of India and of the Provincial Governments from the charge which has been made against them that they have, in order to increase their receipts from Excise, stimulated the consumption of intoxicating liquors and connived at the spread of intemperate habits. I have paid some attention to this important question, which has recently been under the earnest consideration of the Financial Department and of His Honour the Lieutenant-Governor of this province. The evidence which has been laid before me has entirely satisfied me upon three points—

(1) that an increase in revenue from Excise does not necessarily justify the inference that there has been an increase in the consumption of liquor; it has, on the contrary, in many cases been conclusively shewn that an increased revenue has been received upon a diminished consumption:

(2) that it is idle to expect that the Government of India should be able to invent or to put into force an uniform system of Excise administration suitable to the requirements of all parts of the country; and

(3) that if during recent years there has been in some districts an unusual amount of illicit traffic, of loss of revenue and of intemperance, these have been in great measure due to the mistaken assumption that an uniform system was practicable, and to the sudden oscillations of Excise policy occasioned by this belief.

"I wish, before I leave off, to add one word with regard to our prospects in Upper Burma. These are, I think, such as to give us every reason for dwelling hopefully upon the future of that country. My hon'ble friend has pointed out that the estimate for the net charge under this head for 1889-90 is less by 25 lakhs than that for the year which is just ending. This has been the case in spite of a heavy additional expense for the new railway and for the police which we are employing in lieu of regular troops. The cost of the new province is still, however, largely in excess of the return which we obtain from it. This is a condition of things which will, I have little doubt, within a brief space of time, have entirely passed away. In some districts no doubt the inhabitants are still addicted to their old lawless pursuits, nor is it likely that they will suddenly relinquish those habits merely because their country is becoming incorporated in the British Empire. Our difficulties are greatly increased by the fact that on three sides Burma is coterminous with zones of frontier territory inhabited by tribes subject to no fixed system of government and accustomed from time immemorial to warlike and predatory habits. We are I believe slowly, but surely, wearing down the opposition of these; it can be best overcome not by expensive military operations but by the persistent punishment of evil-doers, by the establishment of improved communications by road and rail, and above all by affording to the people of Burma practical evidence of the immense material advantages which are to be derived from British rule. The completion of the railway to Mandalay is a most important step in this direction, and I am glad to observe that a sum is provided in the estimates for next year for the purpose of prolonging that railway in the direction of Mogoung. I may mention in this connection that I have lately received from the Chief Commissioner most reassuring reports as to the general improvement of the country. I learn from him that crime in the Upper Province is steadily diminishing, that the people are returning to their villages, and that the country is well cultivated. The excitement occasioned by the recent outbreaks during the cold weather appears to be passing off and the police are gaining ground rapidly. In many of the districts in which serious disturbances had taken place the country is now described as perfectly quiet. In the Shan States too there is a marked improvement. Perhaps the surest indication of the general progress that is being made is to be found in the steady increase of the revenue. This rose from 22 lakhs in 1886-87 to 50 lakhs in 1887-88, and is etsimated to bring in 68 lakhs in the current year and nearly 76 lakhs in the year which is about to commence. The increase of the land-revenue, which is virtually a tax upon each household and which has

risen from 16 lakhs in 1886-87 to about 41 lakhs in the present year,—the estimate for the new year being nearly 45 lakhs,—may be regarded with special satisfaction; every increase of ten rupees in this tax meaning, as the Chief Commissioner has pointed out to me, that a household has settled down to peaceful pursuits, or that a household which had escaped assessment, owing to the revenue-officers having been occupied in suppressing disturbances, has now been assessed.

"I venture to submit that it is our duty to fix our attention upon the general improvement denoted by the facts and figures which have been given to us by my hon'ble friend and by the Chief Commissioner, rather than upon isolated outbreaks or small local effervescences. These are to be expected, but their significance is not great, and I think the Chief Commissioner may well be congratulated upon the courage which he has displayed, and upon the success which has attended him in the performance of one of the most difficult tasks which a servant of the Government of India has ever been called upon to perform.

"As for the financial position of India, it is, I have no doubt, as Sir David Barbour has pointed out, in the main a sound one, although at the present moment, for reasons which he has given, our resources are subjected to an unusual strain. Under these circumstances the proposals of the hon'ble member are, I think, those which best meet the requirements of the moment. We may be well content if, in spite of the heavy loss by exchange to which he refers, and of the fact that we are providing out of income for special defences to the value of Rx. 1,102,000, we are able to anticipate a small surplus for the coming year. For what lies beyond we must wait upon events, but we may, I think, do so in the hopeful spirit which characterized his statement. If we are able to avoid needless and unprofitable additions to the indebtedness of the country, if we can bring to account its vast latent resources by the judicious investment of capital in their development, if we are able to achieve these results without throwing forward upon those who will come after us the burden of outlay properly chargeable to the revenues of our own time, we need not despair of the future."

The Motion was put and agreed to.

PORTS BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-charges be taken into consideration. He said:—

"When introducing this Bill on 1st February, I explained that it was

introduced mainly with the object of consolidating the existing law, and partly with the object of making certain amendments in that law. I also explained that a draft had been circulated to the Maritime Governments and considered by them and the other local authorities.

"As the Bill was mainly intended to consolidate the law and as a draft had been already circulated to the Maritime Governments and the Bill prepared after consideration of what the Maritime Governments and their advisers had to say, the task of the Select Committee has proved comparatively light, and no alterations of any great importance are recommended. It will be sufficient if I call attention to the more important of the changes proposed.

"In the Bill as originally introduced 'owner' was defined as including an 'agent'; but as it was represented that in India the ship's agent was merely an agent for very limited purposes, and could not fairly be held to be liable in connection with the ship in the same way as the owner would be liable, the Select Committee decided to omit the definition.

"The Select Committee has recommended that power should be given to Local Governments to make rules for regulating the action to be taken by the master of a vessel when there is sickness or disease on board his vessel, and for dealing with dead bodies, and has provided that all rules made by a Local Government under section 6 of the Bill shall be made after previous publication, as provided in the General Clauses Act of 1887. The latter provision will enable persons who are likely to be affected by proposed rules to make known their wishes or objections before the rules are made.

"In introducing the Bill I called attention to the provision whereby a certain liability for the acts of persons employed by them was imposed on contractors who undertook to remove ballast or rubbish. The case which gave rise to the proposed amendment of the law arose in Calcutta, but the persons who are chiefly interested in the matter in Calcutta, namely, the Chamber of Commerce and the Port Commissioners, are strongly opposed to the amendment, and in deference to their wishes the proposal has been dropped.

"The Port Trustees at Bombay have put forward a proposal for relaxing, in certain cases, the provisions of section 31 of the Bill regarding compulsory pilotage. It is not understood that the Trustees wish to make any immediate change as regards the compulsory nature of pilotage in the Port of Bombay, and as the difficulties brought to notice can be overcome by applying the provi-

sions of section 4, sub-section (*1*), clause (*c*), or by the licensing of certain masters as pilots, the Select Committee does not recommend any alteration.

"It has been brought to the notice of the Select Committee that difficulties have arisen regarding the distribution and expenditure of port-dues in ports which have been grouped by the existing Act, or under powers conferred by that Act. It did not seem possible to lay down one system for all such groups, and accordingly the Committee has provided in section 37 of the Bill as amended that the Local Government, with the previous sanction of the Governor General in Council, may make rules in such cases with respect to the expenditure of the fund for the benefit of the several ports, and also that the Local Government shall give effect to any directions of the Governor General in Council on the subject. It is quite possible that some of these provisions may never be acted upon, but in case of need they supply a means whereby disputes as to expenditure in connection with groups of ports can be satisfactorily settled.

"The port of Madras has been entirely separated from the eastern group of ports in that presidency, and the scale of fees proposed by the Madras Chamber of Commerce and the Harbour Trust Board, as amended by the Local Government, was accepted by the Select Committee. The Madras Government has since agreed to reduce the maximum port-due from six annas to four annas a ton, and effect will be given to this decision by an amendment which I propose to move hereafter."

The Hon'ble MR. STEEL said:—"The hon'ble member in charge of the Bill has explained the Report of the Select Committee, but, as I had occasion to make some observations upon this Bill at a previous meeting of the Council. I desire to offer a short explanation. The object of this Bill is to consolidate the laws relating to ports and port-dues, and the few changes proposed are improvements suggested by experience. It will, I think, be generally acknowledged that no part of the duty of administration in India has been better performed than the management of the larger ports by trustees under the control of the Local Governments. But a very different opinion has prevailed amongst traders and ship-owners with regard to the management of certain groups of ports in the Madras Presidency. It has been said that no proper accounts have been kept, that the port-dues have not been properly divided between the various ports in each group; it has been said that large accumulations of funds stand at the credit of these ports, and that it has been impossible to induce the Government to spend money upon any suggested improvements, Under these circumstances the introduction of this Bill appeared a fitting

opportunity to make such provision in the law as shall provide the proper remedy. The Select Committee endeavoured to investigate this matter, but unfortunately it could not obtain all the materials which were necessary for the purpose. As the Hon'ble Mr. Hutchins had told the Council on a previous occasion, the Madras Government discovered in the year 1887 that the accounts were not made up in accordance with the law. In August, 1887, they issued orders that the accounts should be re-written for the previous ten years, and also that a scheme should be prepared proposing a mode of dividing the accumulated funds for the benefit of the ports. Those accounts and that scheme are not yet forthcoming. The Committee were therefore unable to arrive at any conclusion upon the complaints. For my own part I think there is little doubt that the complaints were not altogether without justification, but my hon'ble friend Sir David Barbour has convinced me that if this Bill passes into law any future complaints will be rather against the executive than against the legislature. The Committee has inserted a useful provision to which the hon'ble member alluded reserving to the Government of India power to direct in what manner these funds are to be divided amongst the different ports in each group. With this provision it appears to me that, in future, complaints on the part of traders or ship-owners are sure to receive proper attention. I therefore think that the present Bill may be accepted in discharge of that responsibility which attaches to the legislature."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that "four annas" be substituted for "six annas" in clause (*a*) and clause (*b*) against the Port of Madras (*Foreign Vessels*) in Part II of the First Schedule to the Bill.

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned *sine die*.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 29th March, 1889.

Government of India Central Printing Office.—No. 109 L. D.—1-4-89.—316—.—C. H. L.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 30th May, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliot, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Nawáb Sir Nawázish Ali Khán, K.C.I.E.

LOWER BURMA COURTS BILL.

The Hon'ble MR. SCOBLE moved that the Reports of the Select Committee on the Bill to consolidate and amend the law relating to Courts in Lower Burma be taken into consideration. He said:—

"This Bill was considered by a Select Committee in Calcutta, and would have been submitted to the Council there had it not been necessary to obtain the previous approval of the Secretary of State in Council, under 3 & 4 Will. IV, c. 85, s. 46, and 47 & 48 Vict., c. 38, s. 5, to those sections which empower the Recorder of Rangoon, as the High Court for Burma, to pass sentence of death upon European British subjects of Her Majesty. That sanction has now been communicated, and I have to ask the Council to take the Bill, as finally amended, into consideration.

"In moving for the appointment of the Select Committee, and in presenting their Reports, I so fully stated the scope and objects of the Bill that I should not trouble the Council with many further observations were it not that I have to propose a few amendments to the draft as settled by the Committee. In the interval which has elapsed since the presentation of their Second Report, I have had the advantage of communicating with the Chief

Commissioner of Burma, and also of further considering the Bill in connection with the new edition of the Burma Code which is now under preparation in the Legislative Department. The amendments to which I have to ask the attention of the Council have either been suggested by the Local authorities, or by a minute examination of existing laws. They are not very numerous or important, and I think a very slight explanation will suffice to establish their usefulness.

"The first and eighth relate to the Arakan Hill Districts in Lower Burma which are not sufficiently advanced in civilisation to be placed under the general law, but have special regulations of their own. It has been considered more convenient to save those Regulations by a special section than by a mere reference to them in the local extent clause of the Bill.

"The second amendment is a matter of administrative convenience. It sometimes becomes necessary to place Myo-ôks in charge of subdivisions, and where a Myo-ôk is a Subdivisional Officer, it is desirable that the Local Government should have the power of conferring upon him, as Judge of a Civil Court, the same jurisdiction as is possessed by the Court of an Assistant or Extra Assistant Commissioner. The object of the amendment, which was proposed, by the Chief Commissioner and has been approved by the Judicial Commissioner, is to empower the Local Government to confer such jurisdiction.

"The third amendment is to correct an error of fact. Section 53, in the Bill as settled by the Select Committee, was drawn on the assumption that the jurisdiction of the Court of the Recorder as a Court for the Relief of Insolvent Debtors in the Town of Bassein had been delegated under the Burma Courts Act, 1885, to the Deputy Commissioner of Bassein. The Chief Commissioner has pointed out that, as regards Bassein, there has been no such delegation of the Recorder's jurisdiction.

"The fourth and fifth amendment relate to advocates in the Judicial Commissioner's Court and the Courts subordinate thereto. The Chief Commissioner and the present Judicial Commissioner are of opinion that the provisions of the Burma Courts Act, 1875, with respect to the suspension and dismissal of legal practitioners licensed by the Judicial Commissioner should remain undisturbed. Personally, I should have been willing to give the same right of appeal to the High Court in the case of advocates of the Judicial Commissioner's own court as is given to advocates of the Recorder's Court, but, as I am assured the existing system has worked well hitherto, I have felt justified in yielding to the desire of the local authorities that it should be maintained.

"The sixth amendment is in the words of section 36 of the Legal Practitioners' Act, 1879. The Select Committee were informed that it was in contemplation to extend that Act, or portions of it, to Lower Burma; but that intention has since been abandoned. Both the Chief Commissioner and the Judicial Commissioner, however, consider that the section of that Act which was designed for the suppression of touting and other irregular practices should be enacted as part of the law of Lower Burma: and the Bill has been amended accordingly.

"The object of the seventh and ninth amendments is to remove anachronisms which have come to light in the course of the final revision of the Burma Code, which is to be published as soon as this Bill has been passed by the Council."

The Motion was put and agreed to.

The Hon'ble Mr. Scoble then moved the following amendments:—

i. That the following be substituted for sub-section (2) of section 1 of the Bill, namely:—

"(2) Save in so far as it applies expressly or by necessary implication to other parts of British India (inclusive of Upper Burma and the Shan States), it extends to Lower Burma only; and".

ii. That the following be substituted for section 11 of the Bill, namely:—

Enhancement of original jurisdiction of certian Civil Courts.

"11. (1) The Local Government may, by notification in the Burma Gazette, invest any Myo-ôk with the powers of a Civil Court for the adjudication of suits of value not exceeding three thousand rupees, and any Extra Assistant Commissioner or Assistant Commissioner with such powers for the adjudication of suits of value not exceeding five thousand rupees.

"(2) A Myo-ôk or an Extra Assistant Commissioner or Assistant Commissioner who has been invested with powers under sub-section (1) shall, for the purposes of section 191 of the Code of Civil Procedure, be deemed to be a successor to any Judge who has been prevented, from any such cause as is mentioned or referred to in that section, from concluding the trial of any suit which, if it were about to be instituted, would be cognizable by such Myo-ôk or such Extra Assistant Commissioner or Assistant Commissioner in exercise of those powers."

iii. That the following be substituted for section 53 of the Bill, namely:—

Temporary continuance of insolvency jurisdiction of Recorder at Bassein and Deputy Commissioner at Akyab.

"53. The provisions of section 66 of the Burma Courts Act, 1875, and section 2 of the Burma Courts Act, 1885, shall continue to apply, as if this Act had not been passed, to any proceedings pending immediately before the commencement of this Act in the Courts of the Recorder and the Deputy Commis-

sioner of Akyab as Courts for the Relief of Insolvent Debtors within the towns of Bassein and Akyab under those sections."

iv. That section 78 become section 74, and be expressed as follows, namely :—

"74. (1) The Recorder may, for any sufficient reason, by order suspend or withdraw any license granted by him under the last foregoing section.

Suspension or withdrawal of license by Recorder.

(2) Any person aggrieved by an order of the Recorder under sub-section (1) may appeal to the High Court, and, for the purposes of the Indian Limitation Act, 1877, his appeal shall be deemed to be an appeal under the Code of Civil Procedure."

v. That sections 74, 75, 76 and 77 become sections 75, 76, 77 and 78, respectively, and

the following be added to sub-section (2) of section 75, namely :—

"and for the suspension or dismissal of any such advocates who are guilty of fradulent or grossly improper conduct."

vi. That the following be substituted for section 81 of the Bill, namely :—

Penalty for receiving or giving commission.

"81. (1) Whoever commits any of the following offences :—

(a) solicits or receives from any legal practitioner any gratification in consideration of procuring or having procured his employment in any legal business;

(b) retains any gratification out of remuneration paid or delivered or agreed to be paid or delivered to any legal practitioner for such employment;

(c) being a legal practitioner, tenders, gives or consents to the retention of any gratification for procuring or having procured the employment in any legal business of himself or any other legal practitioner,

shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) The expression 'legal practitioner' in sub-section (1) means any person licensed as an advocate under section 73 or section 75 or appearing, pleading or acting as an advocate under section 76, clause (c), without a license."

vii. That section 100 be expressed as follows :—

"100. The references in section 1 of the Burma District Cesses and Rural Police Act, 1880, and section 2 of the Rangoon Tramways Act, 1883, to the British Burma Municipal Act, 1874, and in section 1 of the Rangoon Port Commissioners' Act, 1879, to the Chief Commissioner of British Burma under the British Burma Municipal Act, 1874, section 28, shall be deemed to be, and on

Certain references to Act VII of 1874 to be read as references to Act XVII of 1884.

and from the third day of January, 1885, to have been, references to the Burma Municipal Act, 1884, and to the Local Government under the Burma Municipal Act, 1884, section 60, clause (c), respectively."

viii. That the following section be added to the Bill, namely:—

Saving of Regulations in force in the Hill District of Arakan.

"103. Save as expressly provided by this Act, nothing therein shall be construed to affect any Regulation in force at the commencement of this Act in the Hill District of Arakan under the Statute 33 Victoria, Chapter 3, section 1."

ix That the following Acts be added to the first schedule in chronological order, namely:—

Number and year.	Title.	Extent of repeal.
1	2	3
	Acts of the Governor General in Council.	
VII of 1874 .	British Burma Municipal Act, 1874 .	The whole.
XIII of 1877 .	Burma Embankment Act, 1877 .	The portion of section 8 beginning with the words "and nothing" and ending with the words of this Act".
XVI of 1886 .	Lower Burma Gaols Delivery Act, 1886.	The whole.

The Motion was put and agreed to.

The Hon'ble Mr. Scoble also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 13th June, 1889.

S. HARVEY JAMES,

Secretary to the Government of India,
Legislative Department.

Simla;

The 31st May, 1889.

S. G. P. I.—No. 212 L. D.—22-12-11.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 13th June, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Nawáb Sir Nawázish Ali Khán, K.C.I.E.

The Hon'ble R. J. Crosthwaite.

NEW MEMBER.

The Hon'ble MR. CROSTHWAITE took his seat as an Additional Member.

CHARITABLE ENDOWMENTS BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to provide for the vesting and administration of property held in trust for charitable purposes. He said:—

"This Bill is of an unambitious character. Its object is to provide in India an officer capable of discharging, in regard to certain classes of charities, the functions which are discharged in England by the Official Trustee of Charitable Lands and the Official Trustees of Charitable Funds; and thus to avoid the difficulty and expense which would otherwise attend the devolution of charitable property.

"It has been a common practice in this country, when lands or funds have been appropriated to purposes of public charity, for the founders to vest them, sometimes by deed, and sometimes more informally, in public servants, such as the Collector of the District, the Director of Public Instruction, the Agent of a Railway Company or the Accountant General. But the trusts so created are personal, none of the offices held by these functionaries being corporate

offices, and the Law Officers have advised that, even if these gentlemen are 'appointed by the designation of their office only, and not by name, the trust-fund would vest in them as individuals, and they would remain trustees until they themselves appointed others to succeed them, or until they died,' in which latter case the trust-estate would pass to their executors or administrators.

"It is obvious that in the changing circumstances of Indian official life much confusion must have arisen from this state of facts, and that it would be difficult, if not impossible, after even the lapse of a comparatively short time, to trace back and discover in whom such trust-property was legally vested. Such an enquiry would involve considerable expense and would profit none but the lawyers. A more simple remedy is proposed by the Bill, namely, to empower the Governor General in Council to appoint a Government servant to be *virtute officii* Treasurer of Charitable Endowments for the territories subject to any Local Government, to constitute this Treasurer a corporation sole for the purpose of holding charitable property, and to vest the property in him 'as a passive bare or dry trustee,' leaving all powers of management to a committee elected or appointed for the purpose, and the constitution of which may be changed without affecting the legal devolution of the trust-property.

"No corporation appears to exist in India capable of acting as trustee in such cases as this Bill is designed to meet. The Secretary of State for India in Council and the Governor General in Council are incapable of being trustees (L. R. 15 Ch. D. 9). It has also been held that Anglican Bishops and Archdeacons in India, who have been constituted by letters patent to be perpetual corporations, with power to take and hold property under grant or license from the Crown, are not capable of acting as trustees in some of the cases which this Bill is intended to meet. To the question whether the Lord Bishop of Calcutta in his corporate capacity might not, under the letters patent for the Bishopric of Calcutta, bearing date the 14th May, 1814, hold land upon trust for a diocesan school, so that, upon his ceasing to be Bishop, it would devolve without a deed upon his successor in the bishopric, an eminent counsel in England, to whom the question was referred, has replied in the negative. 'It is quite true,' he remarks, 'that the Bishop is a corporation sole, and in that capacity can hold the lands belonging to his see. He may, however, only hold such lands as by grant or license from the Company (now Her Majesty) he is authorized to take, hold and enjoy. I think it is clear that the letters patent only refer to lands belonging to, or purchased out of moneys belonging to, the bishopric. * * * * On the whole, I am of opinion that, if the land in question was conveyed to the Bishop as a trustee,

it would pass on his death not to his successor but to his executors.' Nor can the provisions of the Official Trustee Act be resorted to in relief of charities of the class contemplated by the Bill. It is an essential feature of the proposal that the Treasurer shall not, as such, act in the administration of the trust-property, the management and control of which is intended to be left to others; whereas the Official Trustee is required to perform active duties with respect to trust-property vested in him, and is entitled to remuneration for his services; he could not therefore remain passive, and hand over his duties to a local committee.

"It will be observed that the charitable purposes to which the Act applies are limited in character. They include relief of the poor, education, medical relief and the advancement of any other object of general public utility; but they do not include any foundations which have religious teaching as an exclusive purpose. This limitation is in accordance with the policy which dictated Act XX of 1863, by which the Government of India relieved its officers from all duties involving any connection with mosques, Hindu temples and other similar religious establishments; and Act XVII of 1864, by which the Official Trustee is debarred from holding trusts for any religious purpose.

"It will also be noted that the Bill is of a purely permissive character. The Local Government will be unable to make a vesting order or frame a scheme except on application for that purpose; and may, if it sees fit, decline to take any action.

"Finally, the Bill reserves the powers of the Advocate General at a presidency to take action with respect to any charity within his jurisdiction. If more frequent advantage were taken of these powers in connection with section 539 of the Civil Procedure Code, we should probably hear fewer complaints of malversation and misappropriation in regard to native religious endowments."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

[*Lieutenant-General Chesney.*] [13TH JUNE, 1889.]

CANTONMENTS BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved that the Hon'ble Mr. Crosthwaite be added to the Select Committee on the Bill to consolidate and amend the law relating to Cantonments.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 27th June, 1889.

S. HARVEY JAMES,

Secretary to the Government of India,

Legislative Department.

SIMLA;

The 14th June, 1889.

G. C. Press, Simla.—No. 150 L. D.—14-6-89.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 27th June, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. J. Crosthwaite.

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. CROSTHWAITE moved for leave to introduce a Bill to amend the Central Provinces Land-revenue Act, 1881. He said:—

"Since the Central Provinces Land-revenue Act was passed in the year 1881 the experience gained by the officers of the revenue-administration, and especially by the officers engaged in making the settlements now in progress, has shown that the Act requires amendment. The Chief Commissioner has carefully watched the working of the Act and considered those matters with regard to which obscurities or defects in the law have been, from time to time, brought to the notice of the Local Government. He feels that the amendment of a fundamental law like the Land-revenue Act ought only to be undertaken on strong grounds of necessity or expediency, and that in any case nothing should be done to undermine or invalidate principles which had been accepted after full discussion and confirmed by the Legislature. He is now convinced from his own experience that, taken as a whole, the system embodied in the Land-revenue Act is well-suited to the requirements of the province, and that nothing like radical alteration of

the law is anywhere required. There are, however, undoubtedly in his opinion a considerable number of minor matters in respect of which amendment would seem to be desirable; but in considering these he has endeavoured to limit as far as possible the extent of change, and to leave the law unaltered when this course can be followed without serious objection. I must mention here, my Lord, that the Central Provinces Tenancy Act, which was passed in 1883, followed the principles laid down in the Land-revenue Act, 1881, and consequently, if the latter Act is amended, it will be necessary to make a few amendments in the former. I shall, therefore, on a future occasion have to ask for leave to introduce a Bill to amend the Tenancy Act.

"With your Lordship's permission I will notice as briefly as possible the most important amendments which are contained in the Bill.

"In the first place, it is proposed to extend the Land-revenue Act to the scheduled districts of the Central Provinces. These scheduled districts consist of certain zamindári estates included within the limits of six districts. Why these districts were selected to be scheduled is not clear, but, as regards the land-revenue law, the Chief Commissioner considers that there is no reason why it should not be extended to them. They are assessed with revenue, and it is inconvenient that there should be no law for making the settlement of the estates or for realizing the revenue.

"The next amendment contained in section 5 of the Bill with regard to the definition of 'sír-land' is of great importance. By the Tenancy Act of 1883 a proprietor has rights in his 'sír-land' which he has not in other land. He can at his pleasure enhance the rent of the tenant of 'sír-land' or eject him. The amendment, therefore, of the definition of 'sír-land' affects the rights both of the landlord and the tenant and requires most careful consideration.

"The present definition was first enacted in the Land-revenue Act of 1881, and, though it was not considered to be free from objection, it was thought advisable to follow it in the Tenancy Act of 1883. That definition made the following descriptions of land to be sír-land:—first, the land recorded as sír at the last settlement, secondly, land which the proprietor had cultivated himself for twelve consecutive years, and thirdly, waste-land which the proprietor had broken up and cultivated for six consecutive years. Now, it was obvious that, if the proprietor could make land sír by cultivating it for twelve years, he could in the course of time, by ejecting tenants and cultivating their land for twelve years, convert near-

ly the whole village-lands into sír-lands. The result would be the destruction of the tenant-right which it was the object of the Legislature to preserve. To prevent this result it was provided in an *Explanation* to the definition that, if after the date of the settlement at which the land was recorded as sír, or after the land had become sír-land under the twelve and six years occupancy rule, the land was unoccupied by the proprietor for six consecutive years, it would cease to be sír-land, unless it had been leased to a tenant with an express reservation of sír-rights. It was expected that the proprietor would not be able to cultivate more than a certain quantity of land, and that consequently, if he acquired sír under the twelve years or six years rule, he would lose that or other land under the provision contained in the *Explanation*. This expectation has, however, not been realised. Once having made land sír the proprietor can let it with an express reservation of his sír-rights to a tenant and so keep it sír. It is also found that by a system of cultivating the land in partnership with a raiyat the proprietor can manage to farm a large area himself. The proprietor supplies the seed or part of the labour or only the land, and shares the produce with the raiyat. The tenants of sír-land being unprotected against enhancement and ejectment, there exists a powerful incentive to evict tenants and to convert the land into sír. The tendency of the law is, therefore, to promote a contest between landlords and tenants which may have a most injurious effect.

"In some parts of the country this tendency has hitherto not operated to disturb the relations between them. 'The great majority of málguzárs are,' Mr. Mackenzie says, 'still under the influence of the idea that the raiyats of a village are free from interference except at the time of settlement—an idea which has come down to them from the days of Native rule and which has furnished so sure a basis for the tenancy legislation of the Provinces.' But it cannot be expected that, the law being as it is, the landlords will remain under this influence. In parts of the provinces the struggle to make the raiyati lands sír-lands has already begun. It has been ascertained that in 56 villages of the Hoshungabad District the landlords now hold 28,697 acres against 12,718 acres held by them at the last settlement, whereas the raiyats hold only 44,483 acres against 55,506 acres at the last settlement. The cultivated area of these villages has increased by under ten per cent., while the portion of it held by the landlords has more than doubled. The contest in this respect between the landlord and tenant is strongest where the proprietary right in the land has passed to the money-lending classes, who are not restrained by old customs and the kindly relations which existed between the old land-holding families and their tenants.

In conferring proprietary rights in the Central Provinces it was never the intention of the Government to destroy the rights of the tenants, and in order to preserve these rights a limit must be placed on the conversion of raiyati land into sír-land.

"The landlords also have a complaint to make against the present definition of sír-land. Before the Act was passed a tenant-right could not be acquired in sír-land let to a tenant. Under the Act, if a landlord lets his sír-land to a tenant without an express reservation of the sír-rights and if the tenant holds for six consecutive years, the sír-rights are lost. Many of the landlords through ignorance of the law have omitted to make this reservation, and have thus lost their rights in the land which they had for years regarded as their own peculiar home-farm. This state of the law has given great dissatisfaction to the landlords.

"For these reasons, my Lord, I submit that it is necessary to amend the definition of sír-land. The proposal to amend the definition has not been adopted without the most anxious consideration on the part of Mr. Mackenzie and Mr. Fuller, the Settlement Commissioner; but it is considered that without the amendment the contest between landlord and tenant, which has already commenced, cannot be put a stop to, and that the respective rights of the landlord and the tenant cannot be preserved.

"The Bill proposes to leave to the landlords as sír-land all land recorded as sír at the last settlement, all land which they have been cultivating for twelve years when this Bill becomes law and all waste-land which they have broken up and cultivated for six years; and, except with respect to land which has been unoccupied by the proprietor for six years when this Bill becomes law, it further proposes to repeal the rule by which sír-rights were lost in land which might be unoccupied by the proprietor for six consecutive years. The amendment therefore will as far as possible secure rights already acquired over raiyati land while limiting their acquisition for the future. It is not intended, however, to restrict unduly the acquisition of sír-land by a proprietor. It is, therefore, provided by section 19 of the Bill that the Settlement-officer shall record as sír all land which he finds has been cultivated by the proprietor for twelve consecutive years, subject to this proviso, that raiyati land which has been so cultivated shall not be recorded as sír if the total area of sír-land in the mahál would thereby amount to more than a quarter of the cultivated area of the mahál. In effect, therefore, the landlord will have ample power to increase his sír-land by breaking up waste-land and cultivating raiyati land, while he will not

suffer the loss of his sír-rights through ignorance of the law or neglect to secure them by an express reservation. The tenant, on the other hand, will be protected against the loss of the raiyati land by an excessive conversion of such land into sír. It is hoped that these amendments will effect a substantial improvement in the law.

"The next important amendment is contained in section 17 of the Bill. This section inserts a section in the Act with a view to protect thekadárs, gaontias or farmers whose rights were not provided for at the last settlement. In some parts, especially parts which were remote from the seat of Government and which comprised a large amount of waste-land or forest, the Native Governments used to assign a large tract of land to a person, called a zamindár, who had to pay the revenue assessed on it or to render service to the State and who made what he could out of it. No doubt, under an arbitrary Government, the zamindár was liable to enhancement of the revenue-demand and to be dispossessed. He managed the estate by leasing villages or tracts of land to thekadárs or gaontias, who paid nazarána or a premium for their leases, and also a yearly revenue with numerous cesses. They established or improved villages, induced cultivators to reside in them and take up land; they brought waste-land into cultivation, constructed tanks and spent money on the improvement of the property. The custom was that when a lease expired it was renewed to the same thekadár or gaontia or his heirs on the payment of a premium. The zamindár seems to have had the power of ejecting his thekadárs or gaontias, but as a matter of fact the power was seldom exercised. If a thekadár who had spent his money on a village in the expectation of being allowed to continue holding it had been ejected, it would have been difficult for the zamindár to have found another competent person to manage the village. The position then of the gaontia or thekadár with respect to the zamindár at the last settlement was similar to the position which the málguzárs had with respect to the Government. The gaontia or thekadár, therefore, was entitled at the settlement to have some kind of proprietary right conferred upon him, and in some cases such a right was conferred; but in other cases, owing probably to inadvertence, the full proprietary rights were conferred on the zamindár and the thekadár and gaontia were left absolutely unprotected. The result has been that, as the country has been opened up and the competition for land has increased, the zamindárs have sought to raise the rents of the thekadárs and gaontias, or to exact heavy nazaránas from them for a renewal of their leases. In some cases the rents demanded have been agreed to and the nazarána paid, and the thekadár or gaontia has

proceeded to pass on the exaction to the tenants. In other cases the thekadár or gaontia has resisted the zamindar's claims and has been ejected.

"To remedy the omission made at the settlement with regard to protecting the rights of these thekadárs and gaontias section 17 of the Bill proposes an enactment conferring on the Settlement-officer power to inquire into their claims, and, if it is proved that they were in possession at the last settlement or have established their villages or effected substantial improvements at their own cost, to provide for their protection against arbitrary enhancement or ejectment. To meet the cases of those persons who have been ejected recently, probably because the zamindar apprehended that they might be given rights at the present settlement, power is taken for the Settlement-officer to restore to possession and to make provision for the protection of those thekadárs or gaontias who were in possession at the last settlement or have established their villages or effected substantial improvement, and who have been ejected within a period of three years before this Bill becomes law. These powers conferred on the Settlement-officer can only be exercised with the sanction of the Chief Commissioner.

"The next subject I have to notice, my Lord, is the provision made for raiyatwári settlements by section 18 of the Bill. In some districts of the Central Provinces there are tracts over which no proprietary rights were conferred at the last settlement. These tracts are cultivated by tenants holding directly from the Government, but there are no special provisions in the Land-revenue Act with regard to the status of these tenants and the assessment and realization of the revenue payable for their holdings. Mr. Mackenzie is in favour of extending cultivation in places where this will not conflict with the true interests of the Forest Department, which stepped in as the proprietor of all land excluded from the village-waste. He considers that it is in the interests of the people as well as of the Government revenue to meet the keen demand for land which exists in some places, by throwing open to cultivation blocks of culturable waste which are now included in the Government forests, but which have no value from a forest point of view. The question, he points out, assumes an important aspect from its connection with the encouragement of immigration from the crowded districts of the North-Western Provinces and Behar. It is considered that in the best interests of the people and the Government it is advisable to settle these lands directly with the cultivators instead of letting them out to middlemen. The area, therefore, of Government land cultivated by raiyats may be expected to grow annually in importance, and it is necessary to

make provision for making settlements with raiyats and for realizing the revenue from them.

"The system of raiyatwári settlement which the Bill proposes is generally similar to that of the Bombay Presidency which has been lately followed in settling certain villages in the Chánda District of the Central Provinces. Power is given to the Chief Commissioner for the assessment of the lands held by Government raiyats; the lands will be divided into survey-numbers, on each of which a separate assessment, either fixed or progressive, or in the form of rates chargeable according to the results of the harvest, will be made. Provision is made as to the person to whom the assessment is to be offered and the responsibility for, and the realization of, the revenue. With regard to the nature of the right of a raiyat in his holding, it is provided that the right shall be heritable, but the power of transfer is carefully limited, inasmuch as experience has shown that the conferring of a transferable right on a raiyat proves too often a curse instead of a blessing. The raiyat is tempted to borrow money on the security of his holding, and loses his land. It is better to secure his land for him even though by so doing we limit his power of borrowing. In the raiyatwári village there will be appointed a patél who will represent the raiyats in their dealings with the Government, and whose duties regarding the collection of the revenue, the reporting of matters of which the Reveune-authorities require information with respect to his village, the preservation of Government forests, and so forth, are enumerated in section 28 of the Bill. The patél will occupy a position similar to that of a lambardár in a málguzári village; and by section 27 of the Bill it is provided that he shall ordinarily be the mukaddam of his village and that his remuneration shall be fixed by the Chief Commissioner. Provision is also made in the new section 67 I for raiyats who hold Government land not included in regularly settled raiyatwári villages. This provision calls for no special remark.

"The next amendment which requires explanation is that contained in section 22 of the Bill. At the last settlement proprietary rights were in some cases granted in forest-land, but the rights of the tenants to the use of the forest and to cut wood for the repairs of their houses and for agricultural purposes were reserved, and generally the proprietor was bound by the record-of-rights or his sanad to manage the forest properly and in accordance with the orders of the Government. With the extension of railways and the opening up of the country there has been a great rise in the value of timber and forest-produce, and consequently a difficulty has been for some years experienced in compelling

the proprietors to act up to their engagements and to preserve their forests. Section 123 of the present Act was intended to meet this difficulty; but the power to fine a proprietor two hundred rupees for cutting down a village-forest is ineffectual. The proprietor can probably make ten times the amount of the fine by disregarding his obligations and cutting and selling the trees in the village-forest. The destruction of these forests by the proprietors is contrary to the agreements, either express or implied, made by them at the last settlement, it defrauds the inhabitants of the village of their rights in the forest, causes a loss of revenue to the Government and may produce injurious effects on the rainfall and water-supply. Section 22 of the Bill, therefore, contains a provision which it is considered will enable the Local Government to secure the proper management of village-forests. This provision empowers the Chief Commissioner to make rules regarding the management of forest-land which a proprietor is bound under the record-of-rights or his sanad or any other agreement with the Government to manage in accordance with the instructions of Government officers. If the rules are disregarded, the forest-land can be taken under direct management with the previous sanction of the Chief Commissioner, and the timber cut in contravention of the rules may be confiscated. I may mention also that a further means of controlling the owners of these forest-lands is afforded by the power of making the assessment on the forest-lands take the form of rates chargeable according to the results of each year or part of a year. This power is conferred by the amendment of section 46 of the Act made by section 15 of the Bill, and will enable the Government to assess the revenue on the value of the timber and forest-produce disposed of by the proprietor.

"The next subject which I have to notice is the partition of mahâls. In the present Land-revenue Act there is only one section (136) regarding partition. This section gives a co-sharer who holds his share in severalty the right to have that share made a separate mahâl liable only for the revenue assessed upon it. The North-Western Provinces Partition Act (XIX of 1863) has also been extended to the Central Provinces, and under it a sharer in a mahâl is entitled to claim perfect partition, that is, to have his share divided off and made a mahâl separately assessed with revenue; but he cannot have imperfect partition made, that is, a separation of his share in the mahâl without a separation of the joint liability for the revenue assessed on the mahal. The result is that, when a sharer in a mahâl wishes to hold his share of the land in severalty, he is obliged to apply for perfect partition. From a revenue point of view it is inconvenient to have incompact mahâls, that is, to have the lands of one mahâl mixed up with the lands

of another mahál; but, owing to the physical features of the country, it is frequently impossible to make a fair partition so as to make the shares compact. The good land often lies in one place and the inferior land in another. It is consequently extremely difficult to make a perfect partition which will be fair to the sharers and at the same time will not cause inconvenience to the revenue-administration. The unlimited power of claiming a perfect partition is open also to another objection. Every mahál must be separately assessed and should ordinarily have its separate record-of-rights, and, if a number of small mahâls, assessed separately with perhaps less than R20 annual revenue, are created, great inconvenience and expense will be caused to the administration. In two districts (Chánda and Nimar) it was provided in the record-of-rights at the last settlement that a perfect partition should not be made without the sanction of the Chief Commissioner, and, considering that proprietary rights have so recently been granted in the Central Provinces, the Government can fairly impose limitations on the right to perfect partition in other districts and can refuse to allow changes affecting the security of the revenue during the currency of a settlement. Where málguzárs have jointly agreed to pay the Government revenue, the Government may fairly decline to release them from their joint liability. At the same time it is considered that every facility should be afforded to sharers to obtain an imperfect partition, so that they may have a fair division of the village-lands and that each may hold his share in severalty. It is believed that perfect partition will seldom be asked for if an imperfect partition can readily be obtained.

"The new sections inserted by the Bill provide that any co-sharer may claim at any time imperfect partition of his share, but that perfect partition can only be claimed at the time of settlement, and then only by a sharer who holds his share in severalty. Provisions adapted from the North-Western Provinces Land-revenue Act are made for carrying out an imperfect partition. With regard to perfect partition, power is given to the Settlement-officer, subject to rules made by the Chief Commissioner, to declare that a share held in severalty is a separate mahál.

"Section 27 of the Bill makes some changes which require notice in the law regarding the mukaddams or village-headmen. In moving that the Bill which is now the Land-revenue Act of 1881 be passed, Sir Charles Grant made the following remarks regarding mukaddams:—

'As the Chief Commissioner explains in his letter, * * the miscellaneous duties which the Bill imposes on the mukaddam had always, in the Central Provinces, been discharged by the head of the village; and, under the Native Government, any neglect of them

would probably have resulted in forfeiture of the village. Even in the earlier days of our rule, before the award of proprietary right at the late settlements, no difficulty could arise in enforcing the performance of these duties, as the bulk of the land was held on mere farming leases, which the Government could always renew or not as it pleased; and at the head of each village was a responsible farmer, who was aware that the continuance of his lease depended on his good behaviour. The recent gift of proprietary right set grantees free to sub-divide among their families or to sell to richer men. Thus, many village-estates broke up, whilst others accumulated in the hands of absentee capitalists. In the latter case, the Government had no one to look to for the performance of the customary duties attaching to land; whilst, in the former, there were so many landlords that responsibility was divided and frittered away. Further, notwithstanding pledges made by them at the settlements, landholders, in some instances, took advantage of the increased securities of their position to neglect duties which could no longer be exacted from them by the simple expedient of ejection. Consequently, there was a practical difficulty to be dealt with, and, in the words of the Chief Commissioner, " no more simple or effective arrangement was possible than appointing a mukaddam in each village to discharge the miscellaneous duties properly devolving on the village-head.'

" These were the reasons, my Lord, which led to the legislation regarding the mukaddam or village-headman in the Land-revenue Act of 1881. It has been found, however, that the provisions of that Act are in this respect somewhat deficient.

" The law now provides that, where there are resident málguzárs, one of such málguzárs shall be the mukaddam; but the resident málguzár may have only a small share in the village and very little influence. Experience has shown that it is generally hopeless to look to any one but the lambardár, the real head of the village, for the authority which the mukaddam requires for the proper performance of his duties. Moreover, the allowance which is given to the mukaddam is generally so small that it is insufficient to induce a person to undertake the duties and responsibilities of the office. The duties which the Act attaches to the office of mukaddam are duties which are properly attached to the ownership of property, and it is necessary that this responsibility of owners of property should be insisted on. The amendment proposed by the Bill is therefore to provide that the lambardár of a village shall also ordinarily be the mukaddam; that if the lambardár does not reside in the village he shall be bound to appoint an agent to perform his duties; and that notwithstanding the appointment of an agent the lambardár-mukaddam shall be responsible for the due performance of duties imposed on a mukaddam by the Act.

" I must also notice here, my Lord, that to ensure further the due performance of the duties of the mukaddam, and to maintain his authority (which it is

especially necessary to do in the matter of village-sanitation), section 39 of the Bill provides a penalty for failure to perform his duty or abuse of his authority by a mukaddam, and also a penalty for neglecting or disobeying a reasonable and lawful order made by a mukaddam.

"The next important amendments are contained in sections 29, 30, 31 and 32 of the Bill and relate to patwáris.

"These amendments provide, in the first place, for the appointment of patwáris in places where no patwáris previously existed; in the second place, they legalize the collection of the dues payable by tenants in return for the patwáris' services through the málguzárs instead of by the patwáris themselves; and, in the third place, they legalize the appropriation of part of the proceeds of the patwári-cess in defraying the expense of a supervising staff and in meeting charges connected with the working of the patwári-system, such as those for instruments and forms.

"At the last settlement the proprietors in some districts were allowed the option of maintaining patwáris or of making their own arrangements for the performance of the patwári's duties. The result was that in many cases no patwári was maintained and no proper arrangement was made for the performance of his duties. To remedy this section 145 of the Act provided that the Chief Commissioner might make rules empowering the Duputy Commissioner to impose fines on the proprietors and therefrom to make provision for the temporary performance of the duties of the patwári, or to appoint a patwári and to fix his remuneration. No provision was made as to the persons who were bound to pay this remuneration. This enactment has not worked satisfactorily. In many cases proprietors have consented to have a patwári appointed and to pay a patwári-cess, but it is inconvenient to leave it open to proprietors to decide whether they will have a patwári or not. There are also a few unimportant revenue-free grants for which provision should be made for the maintenance of a patwári. Power is accordingly taken, by amending section 144 of the Act, so as to enable the Chief Commissioner to appoint patwáris in tracts where they have not been heretofore appointed, and section 145 of the Act is repealed, as it will no longer be required.

"Section 32 of the Bill adds a new section (146A) giving the Chief Commissioner power to fix the contributions payable by the proprietors and tenants towards the remuneration of patwáris, the cost of supervising their work and maintaining their records. This will enable the Government to enforce the

payment of the patwári-cess and will legalize the expenditure of a part of the patwári-fund in paying for a portion of the supervising establishment of revenue-inspectors and for charges connected with the working of the patwári-system. The fees paid by tenants to patwáris constitute in some districts of the Central Provinces a large proportion of the patwári's emoluments. When these fees are payable in cash it is desirable that they should be collected by the málguzár and paid into the Government treasury instead of being collected by the patwáris themselves. Section 146A therefore gives the Chief Commissioner power to direct that the patwári's fee shall be paid into Government treasury by the lambardár of the mahál or the patél.

"The limit now fixed with regard to the amount chargeable as patwári-cess remains unaltered.

"There is only one other matter which I think requires notice. Section 33 of the Bill inserts in the Act a section giving power to the Chief Commissioner to provide by rule for the appointment, removal and remuneration of kotwárs or village-watchmen, and to define their duties. In the present Act there is not much said about these officers. The Settlement-officer is given power to determine disputes regarding the right of any village-watchman to any customary dues, or other remuneration, and his liability to render any customary service. It is further provided that the lambardár is to collect and pay into the Government treasury the remuneration of the village-watchman, and that the mukaddam is to control and superintend him, to report his death or absence from duty, to maintain him in possession of his service-land, to recover and pay to him any cash allowances to which he may be entitled, and to take such steps as may be necessary to compel him to perform his duty. It may seem out of place to legislate for a village-watchman in a Land-revenue Act; but the kotwár or village-watchman is an administrative officer, like the mukaddam, and is remunerated by a grant of service-land. He therefore falls within the class of village-officers with which the Land-revenue Act deals. It is expedient that he should not be left without control, or subject only to the control of the málguzár, and that provision should be made for his appointment and removal from office.

"The remaining amendments contained in the Bill relate to matters of minor importance. They are, I think, sufficiently explained in the Statement of Objects and Reasons, and I need not therefore detain Your Lordship in Council by enumerating them in detail."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also introduced the Bill.

The Hon'ble MR. CROSTHWAITE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Central Provinces Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 3rd July, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

SIMLA;
The 27th June, 1889.

Government of India Central Printing Office.—No. 646 L. D.—3-5-94.—100.—F. C.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 3rd July, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. J. Crosthwaite.

ACTS VI AND VII OF 1884 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend Acts VI and VII of 1884. He said :—

"Under section 11 of the Indian Steamships Act, the surveyor who makes a survey of a steamship, if satisfied that he can properly do so, gives the owner or master what is called a declaration in a prescribed form, and containing certain particulars. This declaration the owner or master forwards to an officer appointed in that behalf by the Local Government. Upon receipt of the declaration by the officer in question, the Local Government can grant a certificate of survey, and cause it to be delivered to the owner or master.

"A precisely similar procedure is prescribed under sections 9, 10 and 11 of the Inland Steam-vessels Act in respect of certificates granted in accordance with the provisions of that Act.

"This procedure has not in every Province been found satisfactory. The necessity of a reference to the Local Government causes delay and inconvenience, which may sometimes amount to a serious evil; the Local Governments do not in all cases possess the experience and knowledge requisite for dealing with declarations, and have to rely on the advice of officials who are experts in such

matters, so that not unfrequently the reference to the Local Government is not really an additional safeguard. For these reasons it has been held to be expedient to authorise a Local Government to delegate to a competent person its power of granting a certificate of survey whether under the Inland Steam-vessels Act or the Indian Steamships Act.

"No Local Government need adopt this course unless it finds it necessary to do so; and it will be provided that the delegation can only be made with the previous sanction of the Government of India, and that the surveyor who gives a declaration shall not be the person authorised to grant the certificate. These limitations appear to be sufficient to prevent any abuse of the power of delegation.

"Advantage has also been taken of the opportunity to amend the Inland Steam-vessels Act in another respect. A certificate of survey granted under section 11 of that Act specifies the number of passengers the vessel is fit to carry, but there is no provision of the law under which the owner or master can be punished for carrying passengers in excess of the number entered in the certificate. This is an omission which requires to be remedied, and it has therefore been provided that the owner and master shall be liable when passengers are carried in excess of the number entered in the certificate to a fine not exceeding Rs. 10 for every passenger so carried in excess."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BAROUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. CROSTHWAITE moved for leave to introduce a Bill to amend the Central Provinces Tenancy Act, 1883. He said:—

"In the Bill to amend the Central Provinces Land-revenue Act, 1881, which was introduced at the last meeting of the Council, it was proposed to make

some alterations in the definitions of 'sír-land' and 'tenant' in that Act. As these definitions should be the same in both the Land-revenue and the Tenancy Act, it is necessary to amend the latter Act. This opportunity is also taken to make a few other amendments which appear to be desirable in the Tenancy Act, and to add to it a few provisions which have been shown by experience to be required.

"The Tenancy Act at present does not apply to the scheduled districts. I have already explained in moving for leave to introduce the Bill to amend the Land-revenue Act, 1881, that these scheduled districts consist of certain estates called zamindáris. In those zamindáris which are not scheduled the Central Provinces Tenancy Act of 1883 is in force, while in those which are scheduled Act X of 1859, an Act passed to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal, is the law which regulates the rights of landlord and tenant. The latter Act is less simple and less suited to the condition of the people than the former, and there is no sound reason why the law of landlord and tenant should not be the same in the scheduled zamindáris as in the zamindáris which are not scheduled. The Bill therefore proposes to extend the Central Provinces Tenancy Act, 1883, to the scheduled districts and so to make the law of landlord and tenant uniform throughout the Provinces.

"The next important amendment, my Lord, is with regard to the class of thekadárs, gaontias or farmers. It is considered that, where a person has held a tract of land under a farming lease and has broken up waste-land at his own expense and cultivated it for some years, he should have a tenant-right in the land. The amendment which it is proposed to make in the Central Provinces Land-revenue Act will provide for the protection of those thekadárs or gaontias who have held their villages for a long period and whose rights should have been provided for at the last settlement. There is another class of thekadárs or gaontias whose leases are of more recent date, but who have, acting on the belief that their leases would be renewed, expended money and labour in breaking up and reclaiming waste-lands. Mr. Mackenzie is of opinion that this class also requires protection, and section 10 of the Bill accordingly provides that a thekadár or gaontia shall have, when ejected, a right of occupancy in waste-land which he has himself, or by hired labour, broken up and cultivated for a period of twelve years. This provision will compensate him for the improvements which he has effected in the land leased to him, and will, it is believed, be in conformity with the feeling of the people. I may mention that the Tenancy Act regards the reclaiming, enclosing or clearing of lands for agricultural purposes as an improvement for making which a tenant can claim compensation, and the same principle

is recognized in section 69 of the Punjab Tenancy Act, 1887. A thekadár or gaontia is not a tenant within the meaning of the Central Provinces Tenancy Act and is not therefore entitled under the Act to compensation for improvements.

"Section 12 of the Bill inserts in the Act a Chapter dealing with village-service tenants, that is to say, tenants who are recorded in the settlement-papers as holding land rent-free in consideration of their performing some duty or service in the village. The Tenancy Act makes no special provision for this class of tenants, and consequently they have an ordinary tenant-right in the land they hold, and there is no suitable method of compelling them to perform their duties or of depriving them of the village-service holdings if they are incompetent or refuse to perform their duties. The new Chapter contains a few simple provisions declaring that on the death of a village-service tenant the right in his holding shall pass to his successor in office, and that the holding cannot be transferred by the tenant or sold in execution of a decree, and also prescribing the grounds on which he can be ejected from his holding.

"Section 14 of the Bill proposes to add an important provision to section 53 of the Act. It is found that, in order to prevent a cultivator from obtaining a tenant-right, the device has been resorted to by some landlords of entering into a partnership with a raiyat for the cultivation of land. The landlord supplies the land, and sometimes seed-grain or money, and the raiyat cultivates the land as the landlord's partner. The produce is divided in accordance with the agreement between the landlord and the raiyat. In effect the raiyat is paying a rent in kind, but the contract between him and the landlord is so arranged that the raiyat is not a tenant and can be ejected whenever the contract of partnership is determined. The object of the Tenancy Act was to confer tenant-rights on all tenants, and this device is an evasion of the Act. The Bill proposes, therefore, to provide that in all such cases, where a raiyat cultivates under an agreement of partnership with his landlord, the raiyat shall have the right of an ordinary tenant in the land which he cultivates, and that the rent payable by him shall be fixed by a Revenue-officer on application made by the raiyat or the landlord.

"There is, my Lord, one other proposed amendment in the Tenancy Act which requires some explanation. This is section 16, which inserts in the Act a section in order to provide that, when a Settlement-officer for the purposes of his assessment determines the rents of ordinary tenants and bases his assessment on the rents so determined, the landlord is entitled to recover those rents from the tenant. The Tenancy Act provides that the rents of absolute occupancy and occupancy tenants shall be fixed at the settlement; but there is no corresponding provision regarding ordinary tenants. It is doubtful whether section 15

of the Act will in all cases enable the landlord to enhance the rent of an ordinary tenant when the revenue payable by the landlord on account of the tenant's holding is increased. When the revenue is enhanced on the ground that the rents paid by ordinary tenants are below the rents which a Settlement-officer considers to be fair and reasonable for the purposes of assessment, the landlord should be able to realize enhanced rents from his ordinary tenants without having to go through the process of enhancement provided by the Act.

"The last section of the Bill amends section 41 of the Central Provinces Local Self-government Act, 1883. That section confirmed the rates for the maintenance of roads, schools or the district post, for the payment of which provision was made in the last settlement, and it also provided for the recovery of those rates. In the settlements which are now in progress, or which will shortly be commenced, the payment of these rates will have to be provided for, and it is therefore necessary to amend the section so as to make it apply generally to the rates for the maintenance of roads, schools or the district post for the payment of which provision is made at any settlement.

"The other amendments made by the Bill are of minor importance and are, I think, sufficiently explained in the Statement of Objects and Reasons."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also introduced the Bill.

The Hon'ble MR. CROSTHWAITE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Central Provinces Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 10th July, 1889.

S. HARVEY JAMES,

Secretary to the Government of India,
Legislative Department.

SIMLA;
The 4th July, 1889.

G. C. Press, Simla,—No. 213 L. D.—4-7-89.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 10th July, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble R. J. Crosthwaite.

ACTS VI AND VII OF 1884 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Bill to amend Acts VI and VII of 1884 be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Mr. Hutchins, the Hon'ble Mr. Crosthwaite and the Mover.

The Motion was put and agreed to.

CENTRAL PROVINCES MUNICIPAL BILL.

The Hon'ble MR. CROSTHWAITE moved for leave to introduce a Bill to make better provision for the Organization and Administration of Municipalities in the Central Provinces. He said :—

"The law regarding municipalities in the Central Provinces has for many years followed the law in force in the Punjab. In 1867 an Act was passed for the Punjab which was extended by executive orders to municipalities in the Central Provinces. In 1873 the Government of the Punjab found that Act XV of 1867 did not meet the requirements of the Punjab, and accordingly Act IV of 1873 was enacted repealing Act XV of 1867 and making better provision for municipalities. Shortly after this Act XI of 1873 was passed to provide for municipal committees in the Central Provinces. This Act is still in force. It is a short Act

of twenty-three sections drawn exactly on the model of the Punjab Act, IV of 1873. The powers given by the Act for the purposes of taxation are stated in very general terms. As regards the organization of the committees and the administration of towns much is left to rules and bye-laws, and the Chief Commissioner is invested with a somewhat unlimited power of control by which he can suspend or limit all or any of the powers of a committee, cancel any of its proceedings, rules or bye-laws, and remit or reduce any tax which it may impose. Such a law was only suitable for the infancy of municipal institutions, and accordingly it was found necessary in the Punjab to supersede Act IV of 1873 by Act XIII of 1884, an Act containing full provisions, in accordance with modern experience and requirements, for the organization of committees, the administration of municipal towns and the control to be exercised over municipalities by the Government.

"In the Central Provinces also it has now become necessary to replace the present brief enactment by an Act containing more ample and more suitable provisions. The Chief Commissioner, Mr. Mackenzie, has given his careful attention to the state of the municipalities in his Province, and he is of opinion—an opinion in which the executive officers and the municipal committees concur—that the present Act is insufficient to meet the requirements of the municipalities. The powers of taxation given by the Act are expressed in such terms that it is doubtful whether the levy of some of the existing taxes is legal. The legality also of some of the bye-laws and rules now in force is open to doubt, and Mr. Mackenzie is also of opinion that the very wide and arbitrary power of control vested in the Chief Commissioner by section 17 of the present Act should be replaced by the better regulated power of control which is conferred on the Local Government by the Municipal Acts in force in other Provinces.

"The present Bill, my Lord, has therefore been prepared. It introduces no new principles into the constitution of the municipalities in the Central Provinces, but adopts from other enactments, principally from the North-Western Provinces and Oudh Municipalities Act, 1883, and the Punjab Municipal Act, 1884, provisions which appear to Mr. Mackenzie suitable to the conditions obtaining in the Central Provinces, and in harmony with the past policy of the Local Administration in the conduct of municipal affairs.

"Following the usual plan the Bill is divided into eight Chapters. The first Chapter provides for the constitution of municipalities; the second for the organization of municipal committees, the mode in which they can enter into contracts, and their privileges in the case of suits brought against them; the

third for taxation and the municipal fund; and the fourth for the municipal police. The fifth Chapter confers on municipal committees powers for sanitary and other purposes, and the sixth Chapter defines and provides penalties for offences affecting the public health, safety or convenience. The seventh Chapter contains provisions for the control to be exercised over municipalities by the Deputy Commissioner, the Commissioner and the Local Government. The last Chapter contains the usual supplemental enactments such as the provisions regarding notices to be issued by committees, the acquisition of land for a municipality, the alteration of the limits of a municipality and the withdrawal of a municipal area from the operation of the Act.

"I do not think, my Lord, that it is necessary that I should mention in detail all the provisions of the Bill, as it follows in the main the law contained in the Municipal Acts of the North-Western Provinces and the Punjab. I will therefore only notice briefly the principal provisions of the Bill and explain those which are not contained in existing municipal laws. The constitution of committees as provided by Chapter I of the Bill will remain as at present, that is to say, the committee will consist of not less than five members, who will be appointed, as the Local Government may direct, either by virtue of their office or by nomination or by election, or some by one and some by any other of such methods. In accordance also with the present law, not less than two-fifths of the members are to be persons other than salaried officers of the Government. The president and vice-president will be appointed by the Local Government, or by the committee if the Local Government so directs; and power is given to the Local Government to remove for certain specified reasons a president, vice-president or other member of a committee. In sections 11 to 17 of the Bill, both inclusive, the rules for the conduct of business, namely, as regards the time for holding meetings, ordinary and special meetings, the quorum necessary for the transaction of business, and such matters, have been adopted from the Punjab Municipal Act. Section 22 of the Bill slightly modifies the enactment at present in force regarding suits against the committee or its officers. It is provided in the Bill that the period before which such a suit may not be instituted shall be two months, instead of one month, after the delivery of a notice of the cause of action, and the limitation of such suits is fixed at four months, instead of three months, next after the accrual of the cause of action.

"The third Chapter regarding taxation and the municipal fund follows in the main the corresponding Chapter of the Punjab Act. Section 29 of the Bill, however, gives the Local Government a somewhat wider power with respect

to the abolition of taxes. Mr. Mackenzie considers that in the circumstances of the Province this power is needed to prevent the minor municipalities from interfering unduly with trade by imposing octroi on goods passing along lines of traffic.

"Chapter IV of the Bill follows the North-Western Provinces and the Punjab Acts with regard to the provisions relating to the municipal police. This Chapter, therefore, calls for no remark.

"The powers for sanitary and other purposes contained in Chapter V of the Bill are also adopted from the corresponding Chapter in the Punjab Act, and provision is thus made for matters which now have to be provided for by rule. I must notice, however, that in section 47 of the Bill the committee is not required, as in the Punjab Act, to make compensation for refusing to allow a person to erect a new building. The right to obtain compensation in such a case is thought to be too extensive and to be liable to abuse. In the powers conferred on a committee by section 49 regarding bathing and washing places a power has been included enabling a committee to prohibit acts which may cause inconvenience or annoyance to persons using the bathing or washing places. It has been found necessary, for instance, at bathing places, such as those on the river Narbadda, which are much frequented, to prohibit persons from fishing while people are bathing. Section 52 of the Bill contains a new provision empowering the Deputy Commissioner, for the preservation of the public peace or order, to prohibit or regulate the slaughter of animals for purposes other than sale. Such a power is found to be needed in some towns where there may be contests between Hindus and Muhammadans, and the sacrifice or slaughter of particular animals at particular times may give rise to serious disturbances. The provisions of section 60 of the Bill contain the provisions of section 100 of the Punjab Act, regarding the power to inspect places for the sale of food or drink and to seize unwholesome articles of food. Provisions, however, adapted from Bengal Act III of 1886, regarding the disposal of unwholesome food and the power to require the sale of a quantity of any food or drink for the purpose of analysis, have been added, in order to give additional powers for suppressing the sale of unwholesome food or drink. I must also notice that the power given by clause (*c*) of section 79 of the Bill to make rules for licensing, controlling and regulating the practice of brokers, measurers and weighmen practising their calling in public places within a municipality is not taken from the Punjab Act, but is in accordance with the existing practice in the Central Provinces. Clauses (*d*) and (*f*) of the same section are new provisions.

Power is given to the committee by the former clause to make rules for prescribing the standard weights and measures which are to be used within the municipality, and by the latter clause to make rules to prevent, if necessary, nuisance arising from the smoke of factory chimneys.

"The sixth Chapter of the Bill follows the Punjab Municipal Act in defining, and specifying the penalties for, offences affecting the public health, safety or convenience. Such matters are now provided for by the municipal rules, but it is considered advisable that penal legislation of this kind should, as far as possible, be contained in the Act and not left to the discretion of a municipal committee. Two offences have been added by sections 98 and 105 of the Bill to the list contained in the Punjab Act. Section 98 makes it an offence to beat drums contrary to the orders of a committee—an offence which it has been found necessary in the North-Western Provinces to provide for; and section 105, following Bengal Act III of 1886, provides a penalty for selling articles of food or drink which are so adulterated as to be different from the article which the seller professes to sell.

"The provisions of Chapter VII regarding control are taken from the North-Western Provinces and the Punjab Municipal Acts and call for no remark. The last Chapter of the Bill contains the usual supplemental provisions with the addition of section 126, which gives the Local Government power to make rules regulating the conservancy of reservoirs and the land adjoining thereto. The town of Nagpur has for some years been supplied with water from a large reservoir, and recently, owing to the great liberality of Raja Gokuldass, Rai Bahadur, the municipality of Jabalpur has also been enabled to construct a reservoir. Both these reservoirs are situated outside the limits of the municipalities, and it is most important that the Local Government should have the power of taking measures so as to secure the safety and the purity of the water-supply. The section accordingly gives the Local Government power to make rules regulating the doing in the reservoir, or in or upon the catchment area thereof, any act by which the purity of the water or the safety of the reservoir may be impaired, and generally regulating the conservancy of the reservoir and the catchment area. The section also provides that the breach of a rule made under it may be made punishable with fine.

"I think, my Lord, that there is no other matter in the Bill which now calls for remark.

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also introduced the Bill.

The Hon'ble MR. CROSTHWAITE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Central Provinces Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

CENTRAL PROVINCES VILLAGE-CONSERVANCY BILL.

The Hon'ble MR. CROSTHWAITE also moved for leave to introduce a Bill to make better provision for Conservancy in Villages in the Central Provinces. He said :—

"This Bill is intended to make provision for carrying out measures of sanitary improvement in villages situated in rural tracts of the Central Provinces.

"The object which Mr. Mackenzie has had in view in framing the provisions contained in the Bill is to secure the co-operation of the villagers in the work of sanitation. The Central Provinces Land-revenue Act, 1881, declares that it shall be the duty of the mukaddam, the head of the village, to keep his village in good sanitary condition, and the Chief Commissioner is given power to make rules regulating the liability of persons residing in a village for charges necessarily incurred by mukaddams in the performance of this duty. It is difficult, however, for a mukaddam in a small village to make sanitary improvements without incurring unpopularity. The improvements will require money, and money cannot be had without taxation for which the mukaddam will be held responsible by the villagers. The rules for sanitation cannot be enforced without a penalty, and the mukaddam, if he wishes to enforce them, will sometimes have to prosecute those who disobey them, and thereby to incur still greater unpopularity. Mr. Mackenzie considers that the proper course will be to associate the village-community with the mukaddam in the work of sanitation, and thus to place it on a popular basis. The provisions of the Bill are very simple. They are applicable only to a village which contains not less than three hundred inhabitants and which the Deputy Commissioner declares by an order in writing to be in an insanitary state. When this declaration has been made the Local Government may, either on the application of the mukaddam and ten or more of the inhabitants or, if they fail to apply, on the application of the Deputy Commissioner, extend the provisions of the Bill to the village. The next step

will be the formation of a pancháyat consisting of the mukaddam and four representatives of the village-community who are to be chosen by election. The duty of the pançháyat will be to determine, subject to the Deputy Commissioner's approval, the sum which will be annually required for the conservancy of the village, the provision and maintenance of a good water-supply, the maintenance of the village-communications and, if the inhabitants so desire, the aiding of the village-school. This sum is to be raised by an assessment on the houses and lands within the village with reference to the circumstances of, and property possessed by, the owners of the houses and lands. Section 6 of the Bill confers on the Local Government power to make rules for regulating the mode of election and the proceedings of the pancháyat, for ascertaining the wishes of the inhabitants of the village, for limiting the amount of taxation and regulating the assessment and collection of the tax, for regulating conservancy, defining and prohibiting public nuisances, and generally for carrying out the objects of the Bill. The Local Government is also given the power to provide a penalty of fifty rupees for the breach of a rule. Section 7 of the Bill gives the Local Government power to withdraw any village from the operation of the Act, and section 8 provides that when the Act is in force in any village the authority of the district council or local board established under the Central Provinces Local Self-government Act, 1883, shall be suspended in respect of all matters made over to the pancháyat.

"It is not, my Lord, I submit, necessary or desirable to attempt any elaborate system of village-conservancy. What is especially required is to teach the villagers to keep their wells and tanks, or the streams from which they draw their supply of water, as pure as may be practicable, to keep their streets and houses clean, and to arrange so that manure and refuse may be deposited in a place where they will not cause injury to the health of the people. Large powers are reserved to the Local Government in order that the provisions of the law may be used with due care and caution, until the people understand and appreciate the advantages of village-conservancy and are able and willing to take a more direct and active part in the work of sanitary improvement."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also introduced the Bill.

The Hon'ble MR. CROSTHWAITE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Central Provinces Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

[*Mr. Crosthwaite.*] [10TH JULY, 1889.]

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. CROSTHWAITE also moved that the Bill to amend the Central Provinces Land-revenue Act, 1881, be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Sir Charles Elliott, the Hon'ble Mr. Hutchins and the Mover.

The Motion was put and agreed to.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. CROSTHWAITE also moved that the Bill to amend the Central Provinces Tenancy Act, 1883, and the Central Provinces Local Self-government Act, 1883, be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Sir Charles Elliott, the Hon'ble Mr. Hutchins and the Mover.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 31st July, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

SIMLA;
The 11th July, 1889.

G. C. Press, Simla.—No. 232 L. D.—11-7-89.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 14th August, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Muhammad Ali Khan.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

NEW MEMBER.

The Hon'ble BÁBÁ KHEM SINGH BEDI took his seat as an Additional Member.

CANTONMENTS BILL.

The Hon'ble Lieutenant-General Chesney presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Cantonments. He said:—

"It is unnecessary to do more than refer to the circumstances under which this Bill has been prepared. It is sufficient to say that the existing Cantonment Law had become in many respects obsolete, and that it was found simpler and more satisfactory to prepare an entirely new Bill than to attempt an amendment of the existing Act.

"The Select Committee in their Report draw attention to the circumstance that while there has been a general concurrence of opinion on the part of the authorities consulted in favour of the provisions of the first part of the Bill,

relating to the general administration of cantonments as regards police, conservancy, taxation, and so forth, the second part of the original Bill, which relates to immoveable property in cantonments and forms Chapter V thereof, has provoked considerable discussion and opposition. Under these circumstances, as cogent reasons exist for the speedy enactment of the first part of the Bill, it has been decided to omit Chapter V from the revised Bill, and that this chapter should be dealt with as a separate enactment after a further consideration of it by the Select Committee in Calcutta.

"Under this Bill power is given to the Governor General in Council to make rules consistent with the Act for the conduct of various executive duties in connection with the management of cantonments, and amongst other things for the segregation in, or the removal and exclusion from, a cantonment of persons suffering or suspected to be suffering from any infectious or contagious disease.

"It will be within the recollection of the Council that, in consequence of a Resolution passed last year by the House of Commons, the regulations which were at that time in force in regard to the supervision of a certain class of persons liable in a special degree to contagious disease were suspended. Since that time the class in question has been entirely uncontrolled by regulations, and the military and medical authorities report that there has been already an alarming increase of disease among the soldiers of the Indian Army, both British and Native. This is a matter which is engaging the particular attention of the Government of India and the military authorities. It is impossible to overrate the importance of the subject involved, whether we consider the efficiency of the Indian army or the welfare and health, present and future, of those serving in it. The regulations provided by the new Bill for dealing with this matter, the substance of which has just been mentioned above, merely provide for the same precautions being taken in regard to this disease as are required in the case of smallpox, measles, anthrax or any other infectious disease, and are the least coercive that could be imposed, short of according special favour and protection to the propagation of the disease in question over all other contagious diseases. The Government of India has a duty towards the troops serving under its orders, which it is bound by every consideration, and which it intends, to fulfil."

His Excellency THE COMMANDER-IN-CHIEF said:—

"With Your Lordship's permission I propose to say a few words on the Report of the Select Committee which has just been presented by my hon'ble colleague General Chesney.

"I may, perhaps, be allowed to do so, as, being responsible for the discipline and efficiency of the Army, and constantly mixing with troops, as it is my duty to do, I have better opportunities than any of my hon'ble colleagues for forming a correct opinion as to the peculiar needs of the British soldier in India. Moreover, I have been led to understand that the members of this Council are desirous that I should give them my views on the very delicate and important question brought forward for their consideration to-day.

"In deference to public opinion at home, as expressed in a Resolution of the House of Commons, the Contagious Diseases Act was repealed in this country about a year ago. The result has been a most serious increase of venereal in the army, not only in the number of men affected but in the virulence of the disease.

"The Surgeon General, Her Majesty's Forces in India, has been good enough to prepare a statement showing the percentage of venereal cases to the total sick in hospital at most of the stations occupied by British troops in June, 1883, and during the same month this year. The year 1883 has been taken as the Contagious Diseases Act was then in full operation at all the stations given in the statement. From this return I find that at no station in 1883 did the number of venereal cases to sick in hospital reach 30 per cent., at only two stations indeed was it over 25 per cent., while at some stations it was under 12 per cent. In June of this year, at 13 stations the percentage was more than 50, at a great many stations it was just under 50, and at the majority of the remainder it was 30 and over. I shall, perhaps, state the case more clearly if I explain that, on the 13th July, 1883, there were 33,359 British soldiers in the Bengal Presidency, of whom 593 were in hospital with venereal, or at the rate of 1·77 per cent. On the same date in July of this year, out of a force of 44,183 men, 1,548 were in hospital, or at the rate of 3·5 per cent.—as nearly as possible double. Great as this difference is, the comparison is altogether in favour of 1883; for at that time all illnesses resulting from venereal contagion were included as venereal and are shewn as such in the total number of cases, namely, 593; whereas since that time a very large percentage of the results following venereal are not returned as venereal. Consequently, the number of cases in hospital on the 12th July of this year, namely, 1,548, does not really represent the total number of men laid up with, or from the effects of, venereal. However, the figures I have given are sufficiently startling, and I think the Council will agree with me that some remedy must be applied to such a lamentable state of affairs.

"Licensing and compulsory examinations being condemned, we must fall back on supervision and medical treatment in hospitals, while venereal must be

placed on the same footing as other loathsome forms of disease dangerous to the public. Those who voluntarily adopt prostitution as their trade cannot reasonably complain if they are placed under greater restrictions and disabilities than persons engaged in reputable occupations, and fortunately for our soldiers, black as well as white, and indeed for those who are obliged to live in military stations, the discipline necessarily maintained in them renders it comparatively easy for the authorities to keep the disorderly classes who elect to reside in cantoments under control.

"In the present Bill power is taken to ensure the greatest possible amount of decorum in the conduct of prostitutes, and to remove them from cantonments if their presence there is found to be injurious to the public health. The rules by which the policy of the Act in this respect will be given effect to will be framed with the utmost care, and under the direct authority of the Government of India. Under these rules prostitutes who voluntarily come into cantonments will do so upon terms to which objection cannot, I think, be taken, and which will tend to prevent their spreading this terrible disease in the wholesale manner they are now doing.

"Considering the contagious nature of venereal, and how innocent people may suffer both in the present and future generations, it seems a positive duty to try and diminish the danger as much as possible. I trust that the public both here and in England will be satisfied that, in the measures now contemplated, the Government of India is doing no more than is absolutely necessary to check the scourge which is rapidly impairing the efficiency of the army and ruining the health of the soldiers, who are surrounded by far greater temptations in India than (I believe) people in England have any idea of. In a country where prostitution is practised as a trade, and where shame in a European sense does not attach to it, it is hopeless to expect to put it down altogether. All that can be done is to try and minimise its evil results, and raise the moral tone of the soldier by every means in our power. In the present Bill the Government of India have endeavoured to legislate so as to restrain the practice of prostitution as much as possible, and, in order to assist the soldier, institutes have recently been established in all regiments and batteries, which are being made as comfortable and attractive as circumstances will admit, with a view to affording men rational amusement and occupation and thus prevent their spending their leisure hours wandering about bazars and Native cities. For the Government of India to shut its eyes to the existence of prostitution, and to the havoc it is working among our troops,—a havoc

which is preventible without any sacrifice of morality or undue interference with personal liberty,—would be a distinct dereliction of duty, to the charge of which we ought not to expose ourselves."

His Excellency THE PRESIDENT said :—" I think the Government of India is greatly indebted to the Commander-in-Chief for the weighty and outspoken statement to which we have just listened. If there was any room for doubt as to the gravity of the case with which we are confronted, his statement has dispelled the doubt, and I believe that those upon whom will be thrown the responsibility of preparing rules under the Bill now upon the table will certainly endeavour to carry out as effectually as possible the precautions which are suggested by His Excellency's speech. I say 'as effectually as possible,' because he has reminded us that we are not entirely free in the matter. We are bound by the terms of the House of Commons' Resolution, to which he has referred, and, as long as that Resolution is in force, it will be our duty to conform to its spirit. Now, that Resolution lays down two principles—one that the Government of India is not to encourage by its legislation the compulsory examination of women ; the other that it is not to give any facilities for what is described as the licensing and regulation of prostitution in India. I am not without hope that we may find it possible, without overstepping those limits, to provide measures which will be effectual for preventing this particular form of disease from being propagated, as it appears to be at present, without let or hindrance. The rules which we shall have to frame will, I apprehend, follow the general direction indicated by the terms of the Bill, and will be directed mainly to the exclusion from the limited area to which the Bill applies of individuals known to be affected with this class of disease, and to the provision of hospitals in which they may be adequately treated. To say that we are not to take steps of this kind appears to me to be tantamount to claiming for a class of disease which is probably attended with more disastrous consequences than any other, both in reference to its immediate and to its remoter effects, an immunity which is not claimed for any other kind of contagious malady. I do not believe that such an immunity will be claimed even by those who are most earnestly desirous of discouraging immorality, and I hope public opinion will support us in the reasonable steps which it will be our duty to take, in order to carry out, within the limits which I have indicated, this most necessary measure."

CENTRAL PROVINCES MUNICIPAL BILL.

The Hon'ble MR. SCOBLE moved that the Bill to make better provision for the Organization and Administration of Municipalities in the Central

Provinces be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins, the Hon'ble Muhammad Ali Khan, the Hon'ble Mr. Crosthwaite and the Mover.

The Motion was put and agreed to.

CENTRAL PROVINCES VILLAGE-CONSERVANCY BILL.

The Hon'ble MR. SCOBLE moved that the Bill to make better provision for Conservancy in Villages in the Central Provinces be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins, the Hon'ble Muhammad Ali Khan, the Hon'ble Mr. Crosthwaite and the Mover.

The Motion was put and agreed to.

ACT XXXVI OF 1858 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved for leave to introduce a Bill to amend Act XXXVI of 1858. He said :—

"The Bill which I ask leave to introduce is but a little one, and I shall not trouble the Council with any lengthy remarks regarding it. Its object is to amend the law relating to lunatics.

"Under Act XXXVI of 1858 Local Governments may establish or license asylums for the reception and detention of lunatics, and section 4 authorizes a Magistrate to commit wandering or dangerous insanes to 'the asylum established for the division in which his jurisdiction is situate.' About four years ago a question arose as to the accommodation of insane persons belonging to a province which has no public asylum of its own. It was accordingly enacted by Act XVIII of 1886 that, '*when an executive Government has not established within its limits* a public asylum for the reception and detention of lunatics, the Governor General in Council may from time to time appoint an asylum, established in British India beyond those limits, to be an asylum to which a Magistrate exercising jurisdiction within those limits may send lunatics.'

"It will be observed that the power thus reserved to appoint an extra-provincial asylum can only be exercised when there is no such institution

within the province. But it may happen that the asylum most conveniently situated with regard to some parts of a province which possesses an asylum of its own may be outside its limits, and such a case has been recently brought to notice from Assam. An asylum has been opened at Tezpur, which lies in the Assam Valley about 24 hours by steamer above Gauhati. From Sylhet to Gauhati is a long and tedious journey of some 150 miles, which can only be done on foot, and the road passes across the Khasi Hills and through Cherrapunji, which enjoys the reputation of being the wettest place in India. To escort lunatics all this distance is no easy matter, and the sudden and severe changes of temperature involve great risk to their health, which is often far from robust. On the other hand, there is an excellent and commodious asylum at Dacca in Bengal, and there is easy communication between Dacca and Sylhet by the river Surma. On every ground it is far more convenient that insanes from the Surma Valley should be sent to Dacca than that they should be transported across the hills at peril of their lives to Tezpur.

"A similar difficulty might arise if the provincial asylum were full, or if the patient were a female and the asylum ill-adapted for the reception of women, while convenient accommodation could be provided in another place within reach. It is therefore proposed to extend the power of the Governor General in Council to cases in which an intra-provincial asylum has been established but is found to be inconveniently situated with respect to some part of the province, or not to afford sufficient or suitable accommodation.

"The object of the second part of the Bill is to give the Governor General in Council power to remove any lunatic from one province to another—a power which he already possesses with regard to criminal insanes under Act X of 1886, sections 12 and 25. In a country which boasts of 106 different languages this is obviously desirable, or we may have a lunatic shut up in a place where he cannot make himself understood. And, as each province is held financially responsible for its own lunatics, it may wish to have them brought under its own direct supervision rather than to pay some other province a higher rate for taking charge of them."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also introduced the Bill.

[*Mr. Hutchins.*] [14TH AUGUST, 1889.]

The Hon'ble MR. HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 28th August, 1889.

S. HARVEY JAMES,

Secretary to the Government of India,

Legislative Department.

SIMLA;
The 16th August, 1889.

Note.—The Meeting fixed for the 31st July, 1889, was subsequently postponed to the 14th August, 1889.

G. C. Press, Simla.—No. 308 L. D.—16-8-89.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 28th August, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Muhammad Ali Khan.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

ACT XXXVI OF 1858 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to amend Act XXXVI of 1858 (*Lunatic Asylums*) be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Bábá Khem Singh Bedi and the Mover, with instructions to report within two months.

The Motion was put and agreed to.

ACTS XVII OF 1864, X OF 1865, II OF 1874 AND V OF 1881 AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to amend Acts XVII of 1864 (*Official Trustee*), X of 1865 (*Indian Succession*), II of 1874 (*Administrator General*) and V of 1881 (*Probate and Administration*). He said:—

"This Bill deals mainly with the office of Administrator General of Bengal, and its principal provisions will only come into effect upon the occurrence of a vacancy in that office.

"Under Act II of 1874, an Administrator General was constituted for the Presidency of Bengal, which, for the purposes of the Act, was declared to include—

(1) the territories for the time being respectively under the governments of the Lieutenant-Governors of Bengal, the North-Western Provinces and the Punjab;

(2) the territories for the time being respectively under the administrations of the Chief Commissioners of Oudh, the Central Provinces, British Burma, Ajmere and Merwára, Assam, and the Andaman and Nicobar Islands;

(3) such of the dominions of Princes and States in India in alliance with Her Majesty as the Governor General of India in Council might, by notification in the Gazette of India, from time to time direct.

"This definition seems comprehensive enough, but in practice it has not proved so. The addition of other territories to the Indian dominions of the British Crown is not provided for, and the object of section 7 of the Bill is accordingly temporarily to extend the operations of the Administrator General of Bengal to Upper Burma and to British Baluchistan.

"But while the definition is not wide enough in this sense, it seems to the Government of India to be too wide on other grounds. It is greatly to the credit of the present occupant of the post that he has been able to discharge its widespread duties not only without complaint but to the satisfaction of those with whom he has had to deal. So long as he retains his office it is not proposed to make any change in his field of action. But it is clear that he must work to a great extent by deputy; and it has been well pointed out by a high authority that it is very desirable that 'the responsible officer should be himself the real person who exercises effective control over the estates in his charge, and not merely the head of a routine office, leaving all or most of the practical power in the hands of local subordinates.' To secure this object, an alteration of the law is necessary, and section 10 of the Bill empowers the Governor General in Council, upon the occurrence of a vacancy in the office of Administrator General of Bengal, to divide the unwieldy Presidency now under his charge into Provinces having Calcutta, Allahabad, Lahore and Rangoon as their respective centres and appoint a separate officer for each Province. This division will carry with it the further convenience of permitting applications for

administration to be made to the local High Courts, and thus, it is hoped, saving expense and trouble to the parties interested.

"It is not proposed to make any change in the qualification for the office, to which, as at present, members of the English or Irish Bar, or of the Faculty of Advocates in Scotland, will continue to be appointed; and it is believed that the emoluments of the post in the newly constituted Provinces will be about equivalent to those which attach to the corresponding appointments in Madras and Bombay, and sufficient to attract the services of men of equal ability to the present incumbents. The researches of the Finance Committee disclosed the fact that in the years 1883-85 the Administrator General of Bengal derived an average annual income of Rs. 65,553 from his office; in later years it has been even greater. In Madras and Bombay, though the fees amount to only about one-fourth of this sum, thoroughly competent officers are secured. In both the last-named Presidencies, however, the Administrator General also holds the appointment of Official Trustee under Act XVII of 1864. This is permitted by section 9 of the Administrator General's Act, and it seems desirable that the two offices, wherever they exist, should, as a rule, be amalgamated. The Bombay Government reports 'the post of Official Trustee has for some years been held in this Presidency with that of Administrator General and the duties efficiently performed by a barrister, who also practises at the Bar.' A similar arrangement was proposed in Madras by Sir Charles Turner in 1878, and the two offices are now held in that Presidency by one and the same person. The only difficulty in the way of securing this combination generally lay in the fact that one appointment was in the gift of Government, and the other in that of the Chief Justices of the High Courts at the Presidencies. This difficulty has been overcome by the surrender by the Chief Justices of their patronage—a surrender for which I here desire to tender them the acknowledgments of the Government of India; and sections 1 to 5 of the Bill are framed to carry out the arrangement which has been thus satisfactorily effected.

"Section 8 is merely to correct an ambiguity in section 5 of Act IX of 1881, which I am sorry to say has led to some misprinting of the statute-book.

"A more important and quite independent matter is that dealt with by sections 6, 9 and 11 of the Bill. It not unfrequently happens that a person not having his domicile in British India dies leaving assets both in British India and in the country of his domicile, his estate being administered by one

executor or administrator in British India and by another in the country of domicile. It has been held by very high authority that in such cases a receipt given by the executor or administrator in the country of domicile is not a valid discharge to the executor or administrator in British India for any residue or surplus of the Indian estate which he may desire to remit for distribution among those entitled thereto outside British India, but that he must himself distribute the assets in question among them. This is a very inconvenient and expensive process, which, in the case of small estates, is almost prohibitive; and the Bill therefore proposes to legalize, on certain conditions, the transfer of surplus Indian assets to the duly authorized representative of the estate in the country of domicile, if he is willing to receive and distribute them. The many small estates which pass through the hands of the Administrators General will derive special advantage from this relaxation of the existing law in their favour."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

MERCHANDISE MARKS BILL.

The Hon'ble MR. SCOBLE also moved for leave to introduce a Bill to amend the Indian Merchandise Marks Act, 1889. He said:—

"One of the provisions in that Act requires that piece-goods imported into British India should have stamped upon them the number of yards and fractions of a yard contained in each piece, and, in order to save shipments on the way or under order, a clause was introduced into the Bill by which the time within which goods not so stamped might be passed through the custom-houses of British India was extended to the 1st August, 1889. That date was not the date originally fixed by Government, but it was settled by the Select Committee, chiefly at the instance of the mercantile members of that Committee; and it was then considered by them, and by the Committee generally, that the time thus allowed would be ample. Representations have, however, been made by the Chambers of Commerce

of Calcutta, Madras, Rangoon and Karáchi that the time has not proved sufficient, although, as far as Bombay is concerned, it has been found to be ample. There may be circumstances attaching to the importation of goods into the other ports that do not attach to Bombay; and I therefore ask Your Excellency's permission to move for leave to introduce a Bill to amend the Act in that respect by giving Local Governments power, on their being satisfied of the propriety of the action, to extend the time to any period up to the 1st November of this year."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE then introduced the Bill and said that at the next meeting of the Council, which, with His Excellency's permission, he would ask to fix for next week, he would move that the Bill be taken into consideration.

The Council adjourned to Wednesday, the 4th September, 1889.

S. HARVEY JAMES,

Secretary to the Government of India,

Legislative Department.

SIMLA;
The 30th August, 1889.

G. C. Press, Simla.—No. 331 L. D.—30-8-89.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 4th September, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

ACTS XVII OF 1864, X OF 1865, II OF 1874 AND V OF 1881 AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved that the Bill to amend Acts XVII of 1864 (*Official Trustee*), X of 1865 (*Indian Succession*), II of 1874 (*Administrator General*) and V of 1881 (*Probate and Administration*) be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins, the Hon'ble Mr. Evans, the Hon'ble Mr. Crosthwaite and the Mover.

The Motion was put and agreed to.

MERCHANDISE MARKS BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to amend the Indian Merchandise Marks Act, 1889, be taken into consideration. He said :—

"The Bill authorizes Local Governments to use their discretion in extending, to any date before the 1st of November in this year, the time within which piece-goods, which have not their length correctly stamped upon them, may be imported into British India. The extension may be subject to such conditions as

Local Governments may deem fit to impose, in order that no undue or unfair advantage may be taken of this relaxation of the law; and, as it is desirable that no unnecessary delay should take place in dealing with shipments at any port to which they may be consigned, Local Governments are empowered to delegate the power conferred upon them by the Bill to the Chief Customs-authority or any other competent officer at any port within their respective territories."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill be passed.

The Motion was put and agreed to.

FOREST BILL.

The Hon'ble MR. HUTCHINS moved for leave to introduce a Bill to amend the Indian Forest Act, 1878, the Burma Forest Act, 1881, and the Upper Burma Forest Regulation, 1887. He said:—

"Forest law is still somewhat of a novelty in India, and it is not unnatural that classes which have long been accustomed to do as they like with forest-produce should find any restrictions or regulations irksome and oppressive. Still it has been necessary, in order to prevent the utter destruction of such forests as exist, and to secure a permanent supply of fuel, timber and other forest-produce for future generations, that the State should interpose and control the exercise of rights and privileges in selected areas; and I think the people are beginning to understand that the object which the Government had in view in constituting a Forest Department and enacting a forest law was, not merely to obtain a legitimate revenue to be expended for the good of the people at large, but also to improve and make secure the supply of some of the commonest necessaries of their everyday life. My object in proposing to amend the law is by no means to increase the burdens or restrictions which have sometimes appeared oppressive, but only to make the intention of the law plain where it has been liable to misinterpretation; to introduce some more definite and liberal provisions in regard to what is known as shifting cultivation; to define, limit and control the action of Forest-officers in compromising petty breaches of forest regulations; and to enforce the responsibility of licensees for damage done to the forests by their servants.

"Section 2 of my Bill contains some revised definitions. In 'trees' I propose to include 'canes'. This is not a matter of much consequence, but

bamboos have always been classed among 'trees', and it seems logical and proper to place canes and bamboos in the same category.

"The definition of 'timber' is not novel, for it has been taken from the Upper Burma Forest Regulation, and though the wording is somewhat different the sense is identical with that of the old definition in the Act of 1878.

"The definition of 'forest-produce' has been entirely recast, but the only substantial change is that it has been made to include all timber and produce of trees, wherever found. According to Act VII of 1878, although timber includes 'all wood', it is also a kind of forest-produce and as such must have been found in or brought from a forest. But the term 'forest' is itself very indefinite. Some authorities would restrict it to forests constituted as such under the Act. In its wider and popular sense it signifies a collection of trees, but it is not possible to predicate how many trees are necessary, or how close together they must be, to form a forest; and under the Act a perfectly bare area may be constituted a reserved forest—a forest *in posse*. Now, whatever ambiguity attaches to the term 'forest' must also extend to forest-produce, and therefore to timber when regarded as a kind of forest-produce. Timber in the abstract embraces all wood wherever produced: as forest-produce it must have been raised in a forest, and a forest, according to some, means a forest constituted under the Act, and, according to others, a collection of trees in greater or less contiguity. Under my definition, however, timber will have the same meaning throughout the Act: everywhere it will include all wood, wheresoever found.

"Now, the practical effect of this change will of course depend on the sense in which the term is interpreted in the different parts of the present Act. To make myself intelligible on this part of the subject, I propose to disregard the opinion that a forest should be understood to mean one constituted under the Act. In the first place, I think that narrow construction has no sufficient basis, and in the second, if I can show that the term 'timber' could never have been intended to be restricted to wood raised in a forest in the wider sense, *à fortiori* there can have been no intention to confine it to wood raised in a forest in any narrow or artificial sense. In my subsequent remarks therefore I shall generally speak of forests in the popular sense of the word.

"Now, obviously the change which I propose will make no difference in regard to forests constituted under the Act. Timber or any other produce raised in these are clearly forest-produce. The extension of the definition, therefore, will in no

way enlarge the class of offences known as forest offences, punishable under the Act; for these, by their nature and definition, can only be committed in respect of a forest and not in respect of wood, &c., not found in or brought from a forest.

"Then comes Chapter VII, which empowers Government to levy a duty on all timber which is either (1) produced in British India and in respect of which Government has any right, or (2) which is brought from any place beyond our frontier. There is no reason, so far as I can see, why this power should be limited to wood produced in a forest. On the contrary, this chapter strongly confirms the view that such a restriction of the term 'timber' was never contemplated. It seems obvious from the use of the word 'place'—any *place* beyond our frontier—that the authors of the Act intended that all imported wood should be liable to duty. For how would it be possible to show that imported timber was the produce of a forest, even in the widest sense of the term? I think, however, that in this chapter, as well as in Chapter IX, there can be no question that the term 'timber' is used in its wider sense, and includes all wood, wheresoever found; it is only in Chapter VIII, where it has unfortunately been coupled with 'other forest-produce,' that its meaning can possibly be cut down to that of wood raised in a forest. Against this argument, however, may be set the probability that the framers of the Act used the term in Chapter VIII in the same sense in which they had just used it in Chapter VII and in which they were about to use it in Chapter IX.

"But now let us see to what Chapter VIII relates, for it is here only that I wish to effect any practical alteration. It vests in the Government the control of all timber in transit.

"The Local Government may make rules, *inter alia*, to prescribe routes, to require passes, and to provide for the stoppage of timber on which there is reason to believe that any royalty or fee is due, or which it is desirable to mark. Now, it is obviously desirable to mark private wood in order to distinguish it from Government wood. It is also for the benefit of private owners, or for the owners of wood which was not or cannot be shown to have been produced in a forest, that it should be marked once for all: otherwise, unless the rules and the whole chapter is to be a dead letter, the wood must remain liable to perpetual stoppages for examination as to whether some fee or royalty is not due on it. Again, what can be the use of establishing routes unless the transit of all wood passing along them can be subjected to control? It seems to me, therefore, that there is much internal evidence that even in this chapter timber was intended to be understood in its wide and natural sense, and not in that restricted and artificial sense derived from its inclusion as a kind of forest-produce.

"But we are not dependent on internal evidence only. In his speech of 6th March, 1878, Sir Theodore Hope, who was in charge of the Act when it was passing through this Council, observed:—

'Finally, we extend regulations regarding the control of timber in transit (to be applied only where necessary) which have worked well in Burma and are quite as protective of the interests of *private timber-owners* and merchants as they are of those of Government.'

"There is no doubt that these old Burma regulations applied to all wood wherever produced, and there are many other passages in the debates and in the departmental records showing that the intention was to subject all timber in transit to the same control, wherever the necessity for any control existed.

"In most of the provinces rules have been made upon this footing. According to the law in force in Madras and in Burma, there is no doubt that the power of transit control extends to all timber. It is only the Government of Bombay that has found itself constrained to adopt the narrower interpretation, and there it was speedily discovered that such a construction rendered all attempt at control futile and ineffectual, for directly any wood has been conveyed outside a forest it can be passed off as the produce of a private holding with little risk of detection.

"I claim therefore that this new definition will, as regards timber at all events, merely make clear what has all along been the intention of the legislature, and place beyond controversy the practice which exists in every province but Bombay, and without which effectual control is impracticable. As regards other 'produce of trees,' such as India-rubber, mohwa flowers and myrabolams, precisely the same obstacles to efficient control exist, and it follows that they should be put on the same footing as timber, though of course they too will only be brought under regulation where such a course is proved to be really required. I may note here that the Upper Burma law goes much further than my proposal, for it gives complete power of control over every kind of forest-produce in transit, and not merely over 'trees and the parts or produce of trees.'

"I now pass on to the other provisions of my Bill. Section 3 requires no explanation. The object of section 4 is to give greater liberty, while a forest is under settlement, especially to those classes which practise 'shifting' cultivation. The present law forbids fresh clearings absolutely: it is proposed to allow the Settlement-officer to permit them at his discretion.

"Section 5 also relates to shifting cultivation. It does not seem to call for any remark except that it has been taken from the law in force in Burma, where it has been found to work satisfactorily.

"Section 6 makes some small verbal changes in Chapters VII and VIII, consequent on the new definition of 'forest-produce' with which I have already dealt at sufficient, if not excessive, length.

"Section 7 demands a few words of explanation, though it is clearly for the benefit of the people. The compounding of offences is in general open to objection, but petty offenders against the forest law have always been allowed the option of making reasonable amends in money, and so escaping the very serious trouble and annoyance of a formal prosecution before a perhaps distant tribunal. Act VII of 1878 allows such a person to make compensation for any damage which he may have committed, but in the majority of these minor offences there has been no damage, or at all events no appreciable damage; the commonest case of all is an attempt to evade dues which, *ex hypothesi*, has been frustrated. Under the present law, therefore, a man must either be let off scot free, or be prosecuted; there is no third course. In view of this difficulty the word 'offence' was substituted for 'damage' in the special forest legislation of 1881, 1882 and 1886 for certain provinces; and there is reason to believe that, even in provinces governed by the general Act, the practice has been to compound petty offences quite irrespective of the question of damage. I now propose to put matters on a correct, and as far as possible on a uniform, footing. Accordingly section 7 authorizes the levy of compensation for any damage done or dues sought to be evaded, while, to prevent exorbitant demands, I have embodied in the section an executive order passed by my hon'ble friend the Lieutenant-Governor of the North-Western Provinces, that no more than ten times the damage or due shall in any case be exacted.

"The necessity for section 8 is, I think, sufficiently explained in the Statement of Objects and Reasons, but perhaps it will be made clearer by a concrete example—one which actually happened in Burma and has in fact suggested the introduction of this provision. A man had taken out a license to boil cutch, which, among other conditions, provided that no tree below a certain size should be felled and that he should be liable to prosecution for a breach of the conditions of the license. The men employed by him felled some 2,700 undersized trees, and he was prosecuted for abetment of their act and convicted. The conviction, however, was quashed by the Judicial Commissioner, who decided, no doubt rightly, that the lessee could only be held criminally responsible for the acts of his servants

upon proof of his own personal instigation or connivance. Such proof it is obviously impossible to furnish in the great majority of cases, and yet it is reasonable to say that the employer, who receives the produce and benefits by the act which he has covenanted not to permit, ought to be made responsible for the injury to the forest which his labourers entered under cover of his license. To effect this it is proposed to bind him under a penalty and to take power, in the event of a breach, to levy the amount as an arrear of land-revenue: The provision has been adapted from section 25 of the Opium Act, 1878.

"The remaining sections of my Bill merely embody similar provisions to those mentioned above in the special Forest Acts in force in Burma and Upper Burma."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also introduced the Bill.

The Hon'ble MR. HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 18th September, 1889.

S. HARVEY JAMES,

Secretary to the Government of India,

Legislative Department.

SIMLA;
The 6th September, 1889.

G. C. Press, Simla.—No. 353 L. D.—6-9-89.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 19th September, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

CANTONMENTS BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Cantonments be taken into consideration.

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the following amendments be made in the Bill:—

i.—That in section 26, clause (*28*), for the words and figures "under section 25 or of rules made under this section", in lines 5 and 6, the words "or rules made under this Act" be substituted.

ii.—That for section 28 the following section be substituted, namely:—

Extension of certain enactments and rules to places beyond cantonments.

"28. The Local Government may, by notification in the official Gazette and subject to any conditions as to compensation or otherwise which it may see fit to impose, extend to any area beyond a cantonment and in the vicinity thereof—

(*a*) any enactment which, with or without restriction or modification, has been extended to the cantonment or any part thereof under section 25, or

(*b*) any rule in force in the cantonment or any part thereof under clause (*12*) or any of the following clauses of section 26, as well as any direction there in force under sub-section (*4*) of section 27;

and the enactment, rule or direction specified in the notification shall, so long as the notification remains uncancelled, apply to that area as if the area were included in the cantonment."

iii.—That in section 31, for the words "the powers conferred by this Act or any rule thereunder", in lines 8 and 9, the words "powers conferred by or under this Act" be substituted.

He said:—"I should explain that the object of these proposed amendments is to correct an oversight which occurred in the revision of the original Bill by the Select Committee. It was proposed by that Bill to extend enactments to cantonments *by rule*. Under the revised Bill enactments are to be extended *by notification*. The necessity of making certain consequential amendments in other parts of the original Bill was unfortunately overlooked by the Select Committee. It being desirable to move these amendments, I have, after consultation with His Honour the Lieutenant-Governor of the Punjab and the Hon'ble the Law Member, considered it expedient to indicate that, where cantonment regulations are extended to an area beyond the limits of a cantonment, there may be cases in which it may be proper to award compensation to persons who may be injuriously affected by their extension."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY then asked for leave to postpone the Motion that the Bill, as amended, be passed.

Leave was granted.

FOREST BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to amend the Indian Forest Act, 1878, the Burma Forest Act, 1881, and the Upper Burma Forest Regulation, 1887, be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Muhammad Ali Khan, the Hon'ble Mr. Crosthwaite and the Mover.

The Motion was put and agreed to.

BILL TO INDEMNIFY CERTAIN WITNESSES.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to indemnify certain witnesses. He said:—

"By order dated the 16th of October, 1888, a Commission was appointed, under Act XXXVII of 1850, to enquire into certain charges of the corrupt receipt of money and of improperly borrowing money, made against Mr. Arthur Travers Crawford, of the Bombay Civil Service, and Commissioner of the Central Division of that Presidency. That Commission was appointed by the Governor in Council of Bombay, without whose sanction Mr. Crawford was not removable from his office, and who was of opinion that, in the words of the Act, there were good grounds for making a formal and public enquiry into the truth of the imputations of misbehaviour against him.

"In reporting its proceedings to the Secretary of State, the Bombay Government writes:—

'The information concerning Mr. Crawford's alleged malpractices was in the first instance furnished to Government by certain Native gentlemen and officials of high, position, who did not admit that they had themselves paid bribes, and who are not suspected of having done so. They mentioned the names of the persons who, as they believed, had given money, and supplied particulars of some of the transactions. To push the enquiry a stage further, and to procure more positive personal and detailed information, it became then necessary to obtain the statements of the men alleged to have themselves paid money; and to effect this it was requisite to give a definite assurance to the officials concerned that their admissions should not be used to their own ruin, and that they would not be prosecuted or punished by Government if they fully, freely and truthfully disclosed what they knew and what they had done. It was obviously of no avail to believe or hope that Native officials who, as Government had good ground to suppose, had paid bribes would voluntarily come forward and without any promise of immunity would make confessions which might ensure their immediate degradation, dismissal or prosecution in the Criminal Courts, the more especially when, in order to render their own safety absolutely secure, they had only to resolutely deny all cognizance of any payments. The Government was therefore placed in the predicament that it must either give the suspected offenders a promise that, if they spoke the truth, they would be granted immunity from evil consequences, and obtain on this condition such evidence as they could or would give; or refuse to furnish any such guarantee and find itself left powerless and unable to take any action in the presence of what it believed to be a system of widespread and pernicious corruption, and of great and criminal abuse of power. With these alternatives before us, we felt no hesitation in deciding that in the circumstances the preferable, indeed the essentially necessary, course to adopt was to authorize the offer of indemnity to witnesses.'

"The indemnity which, under the stress of these considerations, was actually offered, by the Inspector-General of Police on behalf of the Government, ran in these terms :—

'Mr. Ommanney is empowered to promise immunity from prosecution to any person giving evidence, and, in cases of payments for promotion or to obtain or avoid transfers, may guarantee immunity from official or departmental punishment or loss, subject to the stipulation that the evidence given is the truth, the whole truth, and nothing but the truth."

"The indemnity was therefore twofold—it was a promise not only of exoneration from criminal liability, but also of complete freedom from dismissal from office or degradation such as would ordinarily follow admitted corruption. Such an indemnity, it is clear, could only be made good by legislation in this Council or by Parliament. It was beyond the powers of the Bombay Government. The extent to which it should be recognized has been a matter of long and anxious consideration both by the Government of India and the Secretary of State. The conclusion arrived at is that, while the first part of the indemnity may be confirmed by enactment, the second part must be dealt with administratively. My hon'ble friend Mr. Hutchins will presently explain the manner in which this is to be done : it is my task to submit to you the grounds and the scope of the proposed legislation.

"Both in England and in India, the corruption of public functionaries is an offence. An old Statute—5 & 6 Edward VI, c. 16—is directed 'against buying and selling of offices,' among the offices particularly indicated being those which 'in any wise touch or concern the administration or execution of justice, or the receipt, controlment or payment of any of the King's Highness treasure' or revenue. This Act and all the provisions therein contained were extended by 49 George III, c. 126, to 'all offices, commissions, places and employments belonging to or under the appointment or control of the United Company of Merchants of England trading to the East Indies.' By the Act for the better government of India, 21 & 22 Vict., c. 106, s. 64, it is provided that all enactments applicable to the officers and servants of the East India Company in India are to remain applicable to the officers and servants appointed or employed in India after the transfer of the Government of India to the Crown. There can therefore I think be little room for doubt that the earlier Acts to which I have just referred apply to all persons holding public appointments under the Government in India at the present day of the character which these Acts were intended to reach. By these Acts it is provided that 'if any person shall purchase or bargain for the purchase of or

give or pay any money, fee, gratuity, loan of money, reward or profit, or make or enter into any promise, agreement, covenant, contract, bond or assurance to give or pay any money, fee, gratuity, loan of money, reward or profit, or shall by any way, means or device contract or agree to give or pay any money, fee, gratuity, loan of money, reward or profit, directly or indirectly, for any office, commission, place or employment specified or described in the said Acts, or within the true intent and meaning of the said Acts...........or for any appointment or nomination thereto, or resignation thereof, or for the consent.........or voice......of any person......to any such appointment, nomination or resignation,' he shall be guilty of a misdemeanor, and be 'adjudged a disabled person in the law, to all intents and purposes, to have, occupy or enjoy' the office which he had obtained or sought to obtain by such corrupt means. The Penal Code also, as I need scarcely remind the Council, contains provisions whereby the acceptance or obtaining of any gratification by a public servant 'as a motive or reward for inducing by corrupt or illegal means any public servant to do, or to forbear to do, any official act, or in the exercise of his official functions to show favor or disfavor to any person,' and the abetment of any such offence by a public servant, are made punishable by fine and imprisonment.

"This being the state of the law, the Bill which I ask leave to introduce provides that no suit, prosecution or other proceeding shall be commenced or continued against any person in respect of any cause of action or charge arising out of any admission of an offence in any statement made or evidence given before the Crawford Commission, or in any enquiry undertaken by direction of the Governor of Bombay in Council in connection with the proceedings of the said Commission. We thus give legal force to the first part of the indemnity. I trust the Council will agree with me in thinking that, in any legislation which we may sanction in this respect, we should endeavour to give the fullest possible effect to the undertaking into which the Bombay Government has entered with regard to these witnesses. I do not go the length of saying its *ipsissima verba* must be observed: but, broadly, I think we ought to do all that we reasonably can to keep faith with all those who, on the strength of this indemnity, made admissions which have brought them within the grip of the law.

"It has been questioned in some quarters whether this Council has power to pass such a Bill, and whether there is any precedent for such legislation. I think these objections have no real foundation. In the first place, under section 22 of the Indian Councils Act, this Council has power to repeal, amend

or alter any laws or regulations (including all but certain reserved Acts of Parliament) which were in force in India in 1861; and it has therefore full authority to repeal entirely, and *à fortiori* to modify the operation of, the Acts to which I have referred and which are not among those reserved. With regard to the second point, the power to make laws for all persons, and for all Courts of Justice, and for all places and things within Her Majesty's Indian territories, given by the same section of the Indian Councils Act, includes the power to pass an Act of Indemnity, which is merely a formal and convenient method of exercising the prerogative of pardon. But, if positive precedent be needed, it may be found in the Acts of Parliament relating to corrupt practices at parliamentary and municipal elections, or, to take the latest instance, in the Act passed last year with reference to what is popularly known as the Parnell Commission. It is true that the course which English legislation has usually taken of late has been to offer indemnity before the commencement of the proceedings to witnesses who shall make 'a full and true disclosure touching all the matters in respect of which they are examined' and to make the indemnity depend on the certificate of the Commissioners that the condition has been fulfilled; and it may be regretted that this course was not adopted in the present case. But that which may be lawfully done beforehand is not rendered unlawful by being done afterwards. The validity of the indemnity is not impaired by its being granted *ex post facto*; and it is competent for the Legislature to exercise, instead of delegating, its authority, and to dispense with conditions when the means of fulfilling them are no longer available. The Commission being dissolved, its certificate cannot now be procured, and this Council must take its place. Under these circumstances, I have no hesitation in asking the Council, instead of directing a new enquiry, to extend the benefit of the indemnity to all the witnesses who gave their testimony on the faith of its protection.

"It has not been deemed necessary to provide in the Bill for the validation of the official acts of the disqualified officials. A clause in the Statute of Edward VI enacts that 'all judgments given, and all other act or acts executed or done by any person or persons so offending by authority or colour of the office or deputation which ought to be forfeited or not occupied or not enjoyed by the person so offending, after the said offence by such person so committed or done, and before such person so offending for the same offence should be removed from the exercise, administration and occupation of the said office or deputation, should be and remain good and sufficient in law to all intents, constructions and purposes, in such like manner and form as the same would or ought to have remained and been if this Act had never been had or

made'; in other words, that the disability of the officer by reason of his having obtained his office by corrupt means shall not, in itself, be sufficient reason for setting aside any of his judicial or other proceedings which are unassailable on other grounds."

The Hon'ble MR. HUTCHINS said:—

"I think I should take this opportunity of explaining the part taken by the Home Department of the Government of India in this most unfortunate matter of the Bombay Mamlatdars, who, under the influence of a guarantee against loss, have made statements to the effect that they paid money to Mr. Crawford or to others whom they had reason to regard as his agents. And perhaps I should first explain why the Government of India did not at once take the matter into its own hands. It is one which deeply concerns the internal administration of the country and the character and conduct of the officials by whom that administration is carried on. In ordinary circumstances, therefore, it should have been settled by the Government of Bombay in communication with the Government of India rather than with the Secretary of State. The case of Mr. Crawford, however, had to be disposed of by the Secretary of State, and in accordance with the usual course it was reported directly to His Lordship by the Government of Bombay. The cases of certain Mamlatdars had been brought into prominence owing to their having given evidence before the Commission on Mr. Crawford, and the Government of Bombay in their despatch of 15th February, to the Secretary of State, after intimating the suspension of six officials from judicial functions, showed very clearly that they had before them a long and complicated investigation in the conduct of which they ought to be left perfectly free. They said:—

'The officials with whom we have thus dealt were those who, when examined before the Commission, stated that they had paid money in order to obtain appointments to which were annexed magisterial powers or powers of a higher class than those which at the time they gave the bribes they were exercising. Numerous other officials in similar posts gave evidence before the Commission to the effect that they had paid money to Mr. Crawford or his alleged agents, but their cases are more complicated, and in respect of them a decision can only be arrived at after mature deliberation and careful consideration of all the circumstances in each individual instance. The circumstances in the different cases are so complex and various that they can only be appreciated on deliberate consideration of the entire case. The final disposal even of the question of the native officials who have now been suspended from the exercise of magisterial powers must await our general judgment on the case as a whole. The function which this Government is now called on to discharge is in its essence a judicial one, and in our opinion no intermediate

order should now be passed which would prejudice our final decision, and all incidental questions must remain undecided, save as to provisional and necessary arrangements, until that judgment is arrived at.'

"On the 1st March the Government of Bombay submitted the report of the Commission on Mr. Crawford, together with their own opinion, but meanwhile and subsequently various direct communications passed between the Secretary of State and the Government of Bombay regarding the subordinate officials who had given self-inculpating evidence. So long as such direct correspondence continued, the Government of India felt that their interference was highly undesirable and might produce awkward, perhaps even mischievous, consequences. It was not until the Secretary of State announced his final decision that they considered themselves free formally to intervene.

"The decision of the Secretary of State was contained in a telegram addressed to the Government of Bombay and dated 7th August, which runs as follows :—

'On further consideration, I am of opinion that the case of Mamlatdars must be governed by the spirit of Statute 49 George III, and consequently the order passed by you must be revised. Mamlatdars and other officers proved to have paid money to obtain their offices, or promotion or other official favours, must be dismissed altogether from Government service, unless their cases fall within the second of the two classes into which incriminated officials are divided by paragraph 2 of your Revenue Despatch of 3rd May, 1889. They must be compensated in money for failure of Government to fulfil a pledge which has been found to be out of the power of the Government to perform. In doubtful cases, Sindekar included, and also as to compensation, consult Viceroy before deciding.'

"In this decision the Government of India substantially concur. Stated shortly, its effect is that those who paid money spontaneously cannot be allowed to remain in the service of the State, and that only those can be retained whose payments were virtually extorted. This Bill will indemnify all against suits and prosecutions, but it will not relieve any who made corrupt payments without any extreme pressure from the other penalties which they have incurred under the Statute 49 Geo. III, c. 126. It is not considered right that the guarantee against official or departmental punishment or loss should be maintained in all cases. The rights and liberties of Her Majesty's subjects must not be left at the mercy of Judges or Magistrates who have corruptly purchased their offices and powers. The dismissed men, however, will be given pecuniary compensation for this partial nonfulfilment of the guarantee.

"To show the action taken since the telegram of the 7th August removed the objection to our formal intervention I cannot do better than read some

extracts from a letter addressed to the Bombay Government by the Home Department on the 2nd instant:—

'The last portion of this telegram directed that doubtful cases should be referred to the Government of India, and also the question of the compensation to be given to dismissed officials who had received guarantees of indemnity from the Bombay Government. The case has thus come directly under the cognizance of the Governor General in Council, and it has since been determined by His Excellency in Council, in communication with the Secretary of State and the Government of Bombay, that it is expedient to pass an Act of Indemnity to protect against suits and prosecutions those incriminated officials who stated under guarantee that they paid money to Mr. Crawford. But before such a Bill of Indemnity is introduced it seems desirable that the cases of all those who had publicly inculpated themselves before the Commission should be finally disposed of, such as had brought themselves within the purview of the Statute being absolutely dismissed, and the grounds on which the others might be excused being clearly ascertained. In this view it has become necessary for the Governor General in Council to satisfy himself as to the propriety of the orders passed by the Government of Bombay in every such case, and accordingly my telegrams of the 21st and 22nd desired that His Excellency the Governor in Council would proceed to review his classification of the officials in question, and submit in the first instance the names of those who should unquestionably be removed from office.

'The Bombay Government's Despatch of the 3rd May divided the incriminated officials into two classes:—

"the first comprising those * * * * who * practically volunteered the payment of bribes to secure their own objects, * * * * the second including those who only paid under extreme pressure, in order to avoid unmerited degradation, unjust supersession or ruinous transfers, * * * or * * * * to prevent * * * * the blasting of their official careers."

'Under the terms of the Secretary of State's telegram of the 7th August those who come under the first category must be dismissed without delay, compensation for the loss of office being given to such as made disclosures under the guarantee offered to them through Mr. Ommanney and who have fulfilled the conditions attached to that guarantee. But those who fall under the second category need not be necessarily removed from office. It will comprise those cases in which payment of money was virtually extorted, and was not such a spontaneous and voluntary act as to bring it beyond doubt within the intention of the Statute. As regards these persons the Government of India will be prepared to declare that they have not incurred the disabilities enacted by the Statute and need not be disturbed in their appointments.

'Your telegram of the 23rd August reported the names of seven persons as liable to dismissal under the orders of the Secretary of State. * * *

'All these persons gave evidence before the Commission, and their evidence is recorded in the Commissioners' Report. In regard to them, therefore, the Government of India

is in a position to pass orders. His Excellency the Governor General in Council has carefully considered the statements made by them at the enquiry, and fully agrees with the Governor in Council that they have incurred the penalty of dismissal provided by the Statute. In the last two instances only has there been any serious attempt to suggest oppressive treatment by Mr. Crawford, and in neither was there anything which even approaches to extortion. The Commissioners held in Vinzé's case that the suggestion was "altogether unfounded," and in Támbé's case that "as to the allegation that he was driven to give a bribe by being transferred and superseded, we find it to be groundless." All these seven persons must accordingly be dismissed as proposed.

'In your telegram of the 25th August, you reported the names of seven other officials as also liable to dismissal. * * *

'All these persons received guarantees, but only two of them * * * gave evidence before the Commission. Regarding the rest the Government of India are not in possession of any evidence on which they can come to a decision as to the category in which they should be classed. As regards Kumthekar, his own statements recorded at page 19 of the evidence before the Commission show conclusively that he gave money willingly to obtain an appointment and confirmation as Mamlatdar, and he must undoubtedly be dismissed. Bivalkar's case was not proceeded with at the enquiry, and his evidence in Drávid's case, printed at page 180 of the record, is not altogether conclusive. The Government of Bombay should proceed to deal with his case, as well as with those of any others who did not appear before the Commission, on such evidence as may be in their hands. Those whom His Excellency in Council may find to have made voluntary payments should be at once dismissed. Those cases in which the payment is held to have been virtually extorted should be reported for the information of the Government of India, together with the grounds on which such conclusion has been arrived at.

* * * * * * * *

'Lastly, it will be for the Government of Bombay to propose for the orders of the Governor General in Council the grant of such compensation to the dismissed officials as they think called for. The circumstances of each case should be fully stated so as to enable the Government of India to arrive at a decision.'

"In pursuance of these instructions the Government of Bombay has already removed from the public service the eight officials whom the Government of India directed to be dismissed, and will shortly dispose of others who clearly do not fall under the category of persons who paid under great pressure. It cannot be imputed to the Government of Bombay that in removing these men they are breaking their own guarantee, for their promise has to this extent been overruled by the Secretary of State and the Government of India, and the whole question reduced to the single issue of fact whether the payment can or cannot be regarded as having been extorted. Where this issue is decided against the official his dismissal follows as a necessary consequence, and is the act not of the Bombay

Government but of the appellate authorities which has enjoined the course of action to be pursued. Now that the line of action has been distinctly laid down and some of the leading cases finally disposed of, there is no reason why the Act of Indemnity should be further delayed. The disposal of some of the cases may occupy a considerable time, and it is possible that in some instances further investigation as to the circumstances which led to the payment may be required.

"My hon'ble friend has so framed his Bill as to indemnify against suits and prosecutions all who have confessed to making corrupt payments. In the matter of such statutory indemnity I agree that it is better not to allow the raising of questions whether the particular individual received a formal guarantee, and, if so, whether he has substantially fulfilled the condition by telling the truth, the whole truth, and nothing but the truth. These considerations, however, will materially affect his claim to pecuniary compensation for loss of office."

His Excellency THE PRESIDENT said:—

"The events which have rendered it necessary for the Government to legislate in reference to this subject are so familiar to the public that it is scarcely necessary to offer a lengthened explanation of them in this room, and I have very little to add to the statements which have been made by my Hon'ble Colleagues. The Bill before the Council has been prepared with the object of enabling the Government of Bombay to redeem, as far as it can be properly allowed to redeem, the pledge which was given on its behalf to certain persons implicated by their own confession during the course of the proceedings connected with the recent prosecution of Mr. Crawford. It is, I think, very desirable that there should be no misunderstanding as to the circumstances under which this guarantee was given. The Bombay Government had satisfied itself that there prevailed within a part of the Presidency a system of widespread corruption, encouraged, or deliberately connived at in his own interest, by an official high in the service of Government. Holding this belief, it determined to strike a blow at the system by proving the guilt of the person who was believed to be mainly responsible for its existence and in inflicting exemplary punishment upon him. The surroundings of the case rendered it highly improbable that the evidence necessary in order to obtain a complete disclosure of the facts would be obtained, unless those who were able to give such evidence received an assurance that they would be protected against the consequences of their own admissions. *Primâ facie*, and putting on one side for a moment the purely technical and legal aspects of the matter, I think the case was one in which it was entirely for the Government of Bombay to decide whether such an assurance was or was not indispensable. The object

aimed at by the institution of these proceedings was one of such vast importance, and the necessity of purging the public service of abuses as flagrant as those of which the existence was suspected was so urgent, that it does not seem to me that any complaint can, as a matter of principle, be made of the Bombay Government merely upon the ground that, in order to secure the conviction of the person whom it regarded, and rightly regarded, if his guilt was to be assumed, as by far the most conspicuous offender, it was content to allow others, whose guilt was, upon this assumption, infinitely less serious, to escape the punishment which they deserved. A promise of indemnity under such circumstances was not, therefore, it seems to me in the least reprehensible. Nor, on the other hand, was such a promise unusual, for cases must be familiar to us all in which such engagements are permitted to be given to lesser criminals in order to obtain the conviction of more serious offenders.

" I think, moreover, that we may go further, and say that the offence which it was desired to condone, considering the circumstances under which it was committed, was, in the case of a large number of the persons to whom the guarantee of indemnity was given, not of so heinous a nature as to justify the view that any grave miscarriage of justice would have been involved by allowing those persons to escape the punishment to which they had rendered themselves liable. It is difficult to read the papers which have been submitted to the Government of India in this connection without coming to the conclusion that the Bombay Government is justified in its contention that a large number, at all events, of the incriminated officials, are to be regarded rather as the victims of extortion than as willing parties to corruption. In regard to this point, I have only to add that the evidence disclosed before the Commission appears to show that there were different degrees of culpability amongst the persons by whom the guarantee of indemnity was accepted, and that it does not seem to be beyond our powers to distinguish between those whose offence may, for the reason which I have just given, be regarded as comparatively venial, and those who are guilty of corruption of a more serious kind.

" To the whole of these persons apparently, without reference to the degree of their guilt, a promise of indemnity was extended on behalf of the Bombay Government. No question can arise as to the *bonâ fides* of that guarantee, or as to the sense of duty which led the Bombay Government to give it. The question seems to have been regarded by that Government purely as one of policy, and it is evident from the correspondence which has taken place that no doubt ever arose in their mind with regard to the legality of the action which they were taking.

"It was not until several months after the engagement had been thus entered into, and after the persons to whom it had been given had tendered their evidence, that the legality of the step was called in question. The point is one involving the interpretation of a Statute, and I will not take up the time of the Council in discussing it. It is sufficient to state that it did not occur at the time to the legal advisers of His Excellency the Governor that the Act of Geo. III was applicable to the case with which they were dealing, and I understand that even now, when their attention has been specifically directed to the matter, they are not prepared to admit the applicability of the Statute. Their interpretation of the Statute has, however, not been accepted by the Secretary of State, who has distinctly intimated that, in the opinion of Her Majesty's Government, the guarantee was *ultra vires* and illegal. The reasons alleged by the Bombay Government in support of their view have been carefully examined by our Hon'ble Colleague Mr. Scoble, and he has just stated fully the considerations which have led him, and which have led the Government of India, to concur with the opinion which the Secretary of State has expressed.

"What then is the position of the Bombay Government? Its good faith is not called in question for a moment; the objects with which it acted were objects which must commend themselves to all right-thinking persons, and, as I pointed out just now, the engagement given by them was not in principle abhorrent to our ideas of morality, or in practice unfamiliar to our judicial procedure. It appears to me that, under these circumstances, it is our obvious duty to give the Bombay Government every assistance in our power in order to enable it to redeem an engagement which it has been compelled to break. The faith of the Government of a great Presidency is not lightly pledged, and that pledge once given should be respected in the spirit as well as in the letter. I can conceive nothing more unfortunate than that an impression should be allowed to prevail in the minds of the people of this country that the Government of India, or any portion of it, is prepared to play fast and loose with a solemn engagement deliberately entered into by any person authorised to represent it, or to speak on its behalf, and I believe I am expressing the views of the Government of India, as well as those of the Secretary of State, when I say that it has been our desire in this instance, as far as it was possible to do so, to make good in all essential respects the undertaking on the strength of which these witnesses tendered their evidence to the Commission.

"It appeared, however, to the Secretary of State that there was a point beyond which our desire to redeem the pledge of the Presidential Government ought not to be allowed to carry us, and that that point was reached when the

question became one of legislating for the express purpose of retaining in office, and in the discharge of judicial and administrative functions requiring the highest integrity for their proper performance, persons who had not only become legally incapable of serving the State, but who, by their own admission, had shown themselves guilty of deliberate and voluntary corruption, and consequently wanting in the qualities most essential to secure for them the confidence of the public. The Secretary of State believed that if the guarantee given in such cases was to be literally observed, if a law was to be passed with the object of relieving from a statutory disability men whose fault could not be regarded as a venial one, who were not in any sense the victims of extortion, but the willing aiders and abetters of corruption, a greater blow would be struck at the purity of the public service by the condonation of notorious guilt than by a partial departure from the terms of the bargain into which the Government of Bombay had entered. This view is that which the Government of India is ready to adopt. Except in the cases of some of the most gravely implicated officials, the engagement entered into by the Bombay Government will be literally fulfilled. In these cases we believe that, having to choose between a partial cancellation of the guarantee, and the retention in office of men self-convicted as unworthy of public confidence, a partial cancellation of the guarantee is the lesser evil.

"The test which has been adopted in order to determine in each case whether a more or less serious view should be taken of the guilt of the person concerned, has been that to which I referred just now. It is well described in the Despatch from the Bombay Government to the Secretary of State dated May 3rd, which divided the incriminated officials into two classes:—

'the first comprising those—a comparatively small number—who either practically volunteered the payment of bribes to secure their own objects, to gain undue promotion, or to escape the results of previous misconduct, or who on but slight provocation or under slender temptation paid money to purchase favours to which they had no substantial claim; the second including those who only paid under extreme pressure, in order to avoid unmerited degradation, unjust supersession, or transfers ruinous to their purse and destructive as they feared of their health, or who gave money in despair and on repeated applications to prevent, as they believed, the blasting of their official careers.'

"Adopting this distinction we have come to the conclusion that those officials of whom it cannot be said that the acts of corruption to which they have pleaded guilty were committed under compulsion, or pressure, must be suffered to take a part at all events of the consequences of those acts, and ought not to be relieved from the incapacity which the Statute of Geo. III imposes upon all persons guilty of such offences. Even in these cases, however, the Bombay

Government will be authorized to make good, as far as may be, the assurance which it had given by the payment of an equitable compensation for loss of office to each official removed from the service. The position of the officials who fall within this category will, therefore, be as follows: The terms of the indemnity which they received were intended to shield them in three respects: it led them to expect, first, exemption from punishment for an indictable offence; secondly, protection from private suits and prosecutions; and, thirdly, retention of office in spite of a statutory incapacity. In respect of the first and the second of these engagements, the indemnity will remain intact. The third engagement we are unable to make good, except to the extent of offering to the persons concerned a pecuniary compensation for the injury which their professional prospects will sustain. The dismissal of some of these persons has already been publicly announced by the Government of Bombay.

" In the case of those whose guilt is proved to be of a more venial kind, we propose, by means of a Resolution of the Government of India, publicly to confirm the engagement of the Presidential Government, and to announce that no steps will be taken to disturb them in the offices which they hold. The Bill now upon the table will protect both classes from the suits and prosecutions to which they have rendered themselves liable.

" The solution which has been described by my Hon'ble Colleagues will, I trust, meet with the approval of the Council and of the public, not as being in all respects one upon which we can congratulate ourselves, but as being probably the best solution which the conditions of a very delicate and complicated problem permitted. We have endeavoured, as far as the circumstances allowed us, on the one hand to uphold the credit of the Presidential Government, and on the other, to defend the purity of the service, for the defence of which the Government of Bombay, in the face of much hostile criticism, instituted proceedings against one of its highest officials. The two objects were to some extent irreconcilable, and we have, much to our regret, been constrained to require from the Bombay Government in some cases a partial departure from the promises which it had made. I must, in fairness to that Government, insist upon the fact that, so far as the dismissal of these persons is concerned, it has been a reluctant agent, that it has throughout sought to respect in their integrity the pledges which it had given, and that it is only under the orders of a superior authority that it submits to the decision which has been explained to-day. The Secretary of State has already expressed in the strongest terms his admiration for the courage and singleness of purpose with which His Excellency the Governor undertook a task which must have caused him infinite anxiety. That admiration

is shared by us, and we desire to go, as far as we can venture to go, in supporting the Government of His Excellency. If, to the extent which I have described, we stop short of a complete confirmation of the steps which it has taken, we do so with regret and out of regard for the very consideration to which he has himself given throughout these occurrences the foremost place—the purity of the public service of India."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE introduced the Bill, and moved, under rule 18 of the Rules for the Conduct of Business, that the Bill be taken into consideration at the next meeting of the Council.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 3rd October, 1889.

S. HARVEY JAMES,

Secretary to the Government of India,

Legislative Department.

SIMLA;
The 20th September, 1889.

Note.—The Meeting fixed for the 18th September, 1889, was subsequently postponed to the 19th idem.

G. C. Press, Simla.—No. 384 L. D.—25-9-89.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 3rd October, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. J. Crosthwaite.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

CANTONMENTS BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY asked for leave to postpone the Motion that the Bill to consolidate and amend the law relating to Cantonments, as amended, be passed.

Leave was granted.

BILL TO INDEMNIFY CERTAIN WITNESSES.

The Hon'ble MR. SCOBLE moved to postpone the Motion that the Bill to indemnify certain witnesses be taken into consideration. He explained that some communications which were expected from Bombay in time to be laid before the Council had not yet been received, and he desired, therefore, to postpone the Motion till a future Meeting.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 10th October, 1889.

S. HARVEY JAMES,

Secretary to the Government of India,

Legislative Department.

SIMLA;
The 4th October, 1889.

G. C. Press, Simla.—No. 418 L. D.—4-10-89.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 10th October, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Bábá Khem Singh Bedi, C.I.E.

CANTONMENTS BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved that the following clause be substituted for clause (*21*) of section 26 of the Bill to consolidate and amend the law relating to Cantonments :—

> "(*21*) the prevention of the spread of infectious or contagious disorders within a cantonment, and the appointment and regulation of hospitals or other places within or without a cantonment for the reception and treatment of persons suffering from any disease ;"

and that for the word "suspected" in clause (*22*) of the same section the word "supposed" be substituted.

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill, as amended, be passed. He said :—

"I have already on previous occasions stated at some length the object which has led to the introduction of this Bill into the Council, and it is therefore unnecessary that I should say anything further on this subject, more especially as I understand that my hon'ble friend Mr. Scoble is about to address a few remarks to the Council bearing upon some of the legal aspects of the case.

will therefore only add that Chapter V of the original Bill, which relates to house-property in cantonments, has been reserved to be dealt with as a separate measure in Calcutta, when the important interests which are concerned in that Chapter will be dealt with by the Select Committee with all the care and consideration which they deserve."

The Hon'ble MR. SCOBLE said :—

"There are one or two points in connection with this Bill to which I think it desirable briefly to call attention.

"Although there is no definition of the word 'cantonment' in the Bill, it has a well-understood popular meaning. The term has for more than a century been applied to military stations in India; and these stations have, almost from their first establishment, been subject to special regulations. The troops themselves being under military law, it became necessary—to use the language of Bengal Regulation XX of 1810—'from the great number of native retainers and followers attached to military establishments in India, and the importance of a prompt and orderly discharge of their duties to the welfare of the troops'—to bring them also to a certain extent under military discipline; and with this view, in order to ascertain the areas within which the stricter rules thus sanctioned might be enforced, it was enacted that 'the limits of cantonments and garrisons, including the military bazars attached thereto, at which any division or corps of the army, or any considerable detachment not being less than half a battalion, may be quartered, shall be marked out by the commanding officer in concert with the magistrate,' and submitted for the final orders of Government. Similar Regulations were framed for Madras and Bombay; and, under one or other of these enactments, all the older cantonments in India have been demarcated. It seemed to the Select Committee, therefore, better to adhere to the old method of determining what places were to be treated as subject to cantonment law than to attempt a new definition, and section 4 of the Bill accordingly provides that the Local Government, with the previous consent of the Governor General in Council, may, by notification in the official Gazette, declare any place within its territories, in which any of Her Majesty's regular forces are quartered, to be a cantonment. The same authorities may also from time to time define or vary the limits of cantonments, and may also declare that places are no longer cantonments; while the Governor General in Council is specially empowered to exclude the whole or any part of a cantonment from the operation of any portion of the Act. These provisions have been introduced in order to meet the changes which necessarily occur in the distribution of troops throughout the coun-

try; and it is considered that by requiring the concurrence of the Local Authority and the Supreme Government to the establishment or continuance of cantonment law in any locality every reasonable safeguard is secured that private rights will be respected and public convenience duly regarded.

"While recognizing the necessity of maintaining special laws in places primarily intended for the occupation of troops and followers, it has been the object of the framers of the Bill to assimilate, wherever it was possible, cantonment law to that prevailing in municipalities. In some parts of India cantonments are included within the limits of municipalities, and special provisions have been introduced to prevent any conflict of jurisdiction from this cause. But in all cantonments only such taxes as can be imposed in a municipality in the same Province may be levied; and, by section 25 of the Bill, the Governor General in Council is authorized to extend to any cantonment any enactment in force in any municipality in British India, subject to such restrictions and modifications as circumstances may show to be expedient. Under this section I hope many useful sanitary provisions, to be found in local laws—such, for instance, as the provisions of section 364 of the Calcutta Municipal Consolidation Act, 1888, with regard to the sale of adulterated articles of food—will be introduced into military stations.

"Section 26 of the Bill contains a very careful enumeration of the objects and purposes for which special rules may be made. To secure uniformity it is provided that the rules shall be made by the Governor General in Council, and to secure publicity that they shall not be made until the persons to be affected by them have had an opportunity of examining them and submitting such criticisms or objections as they may wish to offer. Exception has been taken to the power given to make rules 'for the construction and maintenance, to the satisfaction of the cantonment authority, of buildings and of boundary walls, hedges and other fences.' I think this is a very necessary power. It is possessed by municipal authorities everywhere; and owners of property will only have themselves to blame if rules of a really more oppressive or arbitrary character than those which prevail in well-organized civil communities are passed for lack of due remonstrance on their part.

"With regard to cantonment funds, it may be observed that, although the Bill requires that, as a general rule, they must be expended upon the purposes of the Act within the cantonment itself, power is taken, in section 21, to apply them to like objects (as, for instance, the formation and conservancy of a cholera camp) beyond the limits of the cantonment.

"One other point remains to be noticed. It will be obvious that the health and discipline of the dwellers in cantonments cannot be secured if breaches of cantonment rules can be committed with impunity just outside their boundaries. Section 28 of the Bill accordingly provides that the Local Government may extend to the neighbourhood of a cantonment any enactment or rules in force within the cantonment itself. It will rest with the Local Government, and not with the military authorities, to determine in what respects, and within what area, these rules and enactments ought to be applied beyond cantonment limits; and, in order to prevent hardship or loss to owners of property in such neighbourhoods, it will be in the power of the Local Government to award such compensation or to make such other conditions as the circumstances of the case may require."

The Motion was put and agreed to.

OFFICIAL SECRETS BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to prevent the disclosure of Official Documents and Information. He said:—

"This Bill has not orginated with the Government of India; it is a mere re-enactment of an Act which was passed during the last session of Parliament to prevent the disclosure, by unauthorised persons, of official documents and information. This Act applies to all parts of Her Majesty's dominions, and is therefore already in force in India, but it has been thought desirable to place it also on the Indian Statute-book, in order to give it greater publicity, and to bring its provisions into complete harmony with our own system of jurisprudence and administration. In Indian law, for example, the technical distinction between felonies and misdemeanors which survives in the criminal law of England has not been maintained, and is therefore not reproduced in the Bill; and the provision in the English Act that prosecutions under the Act shall not be instituted except by or with the consent of the Attorney General has been modified by substituting the consent of the Local Government or of the Governor General in Council for that of the Law Officer. In other respects the Bill follows the language of the English Statute.

"There can, I think, be little doubt that a measure of this sort has long been required. The offences which it is intended to reach are (1) the wrongful obtaining of information in regard to any matter of State importance, and (2) the wrongful communication of such information. The penalties range from

transportation for life to imprisonment or fine, according to the gravity of the offence. The offence is, of course, aggravated when committed by a servant of Government, contrary to his official duty."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill, and moved that it be taken into consideration at the next Meeting of the Council. He explained that, as the measure was only a reproduction of the English Act, it seemed unnecessary that it should be referred to a Select Committee.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 17th October, 1889.

S. HARVEY JAMES,

Secretary to the Government of India,

Legislative Department.

SIMLA;

The 11th October, 1889.

G. C. Press, Simla.—No. 447 L. D.—14-10-89.—316

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 17th October, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Bábá Khem Singh Bedi, C.I.E.

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. CROSTHWAITE presented the Report of the Select Committee on the Bill to amend the Central Provinces Land-revenue Act, 1881.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. CROSTHWAITE also presented the Report of the Select Committee on the Bill to amend the Central Provinces Tenancy Act, 1883, and the Central Provinces Local Self-government Act, 1883.

BILL TO INDEMNIFY CERTAIN WITNESSES.

The Hon'ble MR. SCOBLE moved that the Bill to indemnify certain witnesses be taken into consideration. He said:—

"Since the introduction of this Bill I have received a considerable number of telegrams and other communications from various parts of the Bombay Presidency, urging that British honour and British prestige require that the indemnity given by the Bombay Government should be maintained in its integrity, and that the adoption of any other course will be fraught with evil results. Public meet-

ings have also been held in several places at which resolutions to a similar effect have been passed; and in many vernacular and other newspapers articles have been published in which the same view has been expressed with more or less vigour and ability.

"I desire to speak with all respect of these manifestations of public opinion, though there doubtless may be some room for supposing that the agitation is not altogether spontaneous, and that public opinion is not really so deeply stirred as it is represented to be. But I quite admit that there is a great deal to be said in favour of the view thus put forward; that the course which Government has felt itself constrained to adopt cannot but be distasteful to many members of a large and influential class; and that it would have been much easier to have looked at the matter entirely from the point of view of the incriminated officials, and given them the complete immunity which is now claimed on their behalf.

"But there is another point of view which those who remonstrate against our action seem to me to have entirely left out of sight, but which the Government of India, looking dispassionately at the whole history of the case, could not fail to consider. The indemnity given in this case, as in every other of which I can find any record, was conditional. The Masters in Chancery, who furnish the precedent on which most reliance is placed, were required to 'fully and truly discover and disclose' their misconduct before a competent tribunal; and more recent legislation makes a certificate from the examining authority a condition precedent to the grant of the indemnity. I think it must be admitted that this is a proper condition to make, and had an indemnity Bill been proposed in this Council before the Commission began its labours, I should certainly have insisted on the insertion in the Bill of such a condition. Had this been done, those who have read the report of the Commissioners will probably agree with me in doubting whether the necessary certificate would have been granted to a good many of the witnesses. I have no desire to rekindle a painful controversy, but when I find such expressions as these used in the report,—'We think the story of these witnesses is disproved by considerations of a broader kind, its extreme improbability and its inconsistency with undoubted facts and with contemporary documents,'—'The contradictions and improbabilities apparent on the face of the evidence deprive it of any title to credibility,'—when I find that some witnesses are described as 'untrustworthy,' and the evidence of others stigmatized as 'false,' and that these were the deliberate opinions of an exceptionally strong Commission, the members of which had the advantage of seeing and hearing the

witnesses, and observing their demeanour, I cannot but come to the conclusion that some of those who now clamour so loudly for complete indemnity might possibly not have obtained any at all. In granting indemnity against suits and prosecutions to all alike, without reference to the fulfilment of the above condition, the Government of India has thus possibly extended, rather than narrowed, the limits of the original promise. We were by no means bound to assume, in the face of the Commissioners' report, that the evidence given was, in every instance, 'the truth, the whole truth and nothing but the truth.' That we have done so is immensely to the advantage of many of those concerned, and no objection has been taken to the course which we have considered it expedient to pursue in this respect. But if the right to waive an essential term of the indemnity in favour of any of the witnesses is admitted, this admission surely carries with it the concession of the right to determine whether the condition has been so completely fulfilled as to require, *ex debito justitiæ*, that the full indemnity ought to be granted.

"I am not therefore greatly concerned to refute the argument which has been based on an appeal to British honour and British prestige. Those priceless possessions will, I venture to think, be best maintained by a close adherence to what is most conducive to public rather than individual interests. But I may be permitted to say that I scarcely understand the moral attitude taken up by the apologists of the incriminated officials. They insist that the Government must scrupulously adhere to its plighted word, while they appear to recognize no such obligation on the part of its servants to the Government itself. The argument amounts practically to something like this:—Any promise made to mamlatdars must be kept at any cost: but mamlatdars must be allowed to break laws, and to violate duty, with impunity. Indeed, they are held up to admiration as patriots and martyrs because of what seems to me an absolute want of moral sense, first of all in paying bribes, and afterwards in holding their tongues about the system of corruption which they themselves had rendered possible, until they could speak without the slightest risk of danger to themselves. The men who did this, be it remembered, were not poor raiyats—in the words of the Bombay Government, 'they were astute and educated native officials, who drew their inferences from known facts, and who, when they paid considerable sums to secure favours, did not recklessly throw their money away, or give up their hardly earned savings, without satisfying themselves that they would derive some advantage from the payment.'

"I think the aspect of the case which is thus presented has been somewhat lost sight of by the apologists of these officials. It is to me almost in-

conceivable that not one man should have been found among them with sufficient courage and honesty to come forward and denounce the system of corruption which he found prevailing. But we are told 'a dumb helplessness seems to have pervaded the official class. A sense of the inevitable necessity of buying favours caused many to come forward with money who were quite free from corrupt inclinations.' To my mind this is an altogether insufficient excuse. If the moral fibre of native officials in the Bombay Presidency is thus weak, it requires to be strengthened, and it is not likely to be strengthened by the indiscriminate retention in office of men who have shown themselves thus deficient in courage and a sense of honour. The Bombay Government has drawn a distinction between two classes of witnesses—those who offered to pay, and those who consented to pay under compulsion. In accepting this distinction, and consenting to the continued employment of the latter class, the Supreme Government has, I think, gone as far as it could go with a due regard to the interest of the public service. The dismissal with compensation of the less venial offenders will, I hope, teach the lesson that tame submission to an 'energetic and dominating personality' is not a sufficient excuse for dereliction of duty, and that service and obedience are due not to the individual but to the State and to the law.

"It is said by a body no less respectable than the Poona Sarvjanik Sabha that 'the alleged evil of continuing men in office who made payments to Mr. Crawford cannot under any circumstances be compared with the evil results of the violation, even partial, of its pledge by the Government, and the loss of confidence it will generate and the sure risk incurred in that it will be impossible evermore to detect corruption in high places.' I have already dealt with the first part of this argument; as regards the rest I will only say that I trust the action of Government will inspire officials and others with the best sort of confidence—confidence to pursue the right course in spite of all hazards—confidence that the ear of the Sirkar is always open to the truth—and that thus corruption in high or low places will be rendered impossible of detection because it will be impossible for it to exist. I cannot, however, bring myself to believe that the state of things which has necessitated the present legislation will ever be reproduced, or that a similar paralysis of public spirit is likely to occur again among the educated and ambitious classes from which our subordinate service is recruited.

"I have noticed with regret that in some quarters an attempt has been made to draw a distinction between the punishment meted out to Mr. Crawford and that awarded to the witnesses who testified against him. This distinction, it is asserted,

rests upon difference of race which has prompted difference of treatment. In answer to this unfounded suggestion it is sufficient to say that while Mr. Crawford has been dismissed from Her Majesty's service without indemnity or compensation, the witnesses against him, even if not retained in the service, obtain both indemnity and compensation, and the advantage is therefore altogether on their side.

"So far therefore as the persons affected by this Bill are concerned, I think substantial justice has been done. I am not surprised that the settlement is not considered satisfactory by some of the witnesses and their friends, and I am not astonished that there has been a good deal of fervid eloquence expended on the subject: but I think the public generally will be disposed to accept the solution at which we have arrived as just and reasonable, and will give the Government credit for having honestly attempted to reconcile the observance of a somewhat inconsiderate promise with the maintenance of that high standard of duty without which public employment, especially in Oriental countries, is only too apt to degenerate into a means of practising oppression and extortion."

The Hon'ble MR. HUTCHINS said :—

"It was certainly not to be expected that this Bill or the limited indemnity which it provides would give universal satisfaction, and I am not at all surprised at the multitude of protests and memorials which it has elicited. Still I venture to express my concurrence with my hon'ble friend in the hope that the course which the Government of India has determined to take will command general approval outside the Bombay Presidency, or perhaps it would be more correct to say outside a certain limited class within that Presidency. Our decision was not arrived at without much anxious consideration, without carefully balancing the evils which unfortunately confronted us on every side; and I wish to take this opportunity of discussing in some detail one or two of the principal arguments which have been urged in support of the demand for complete immunity, in order to show that they have not been overlooked and why I think they may be disregarded.

"Perhaps the most formal and elaborate statement of these arguments is contained in the letter from the Poona Sarvajanik Sabha from which my hon'ble friend has made a quotation, but the other communications which we have received proceed upon the same lines. I wish to note, in the first place, that the Sabha formally admits, and the same concession has been made almost universally, that the guarantee given by the Bombay Government 'in respect

of place or office was *ultra vires*.' This is a point of the very greatest importance, for, as I shall presently show, it forms the basis of the action taken by the Government of India.

"It would not have occurred to me to notice the argument that Your Excellency's Government is itself responsible for the 'inconveniently wide guarantee' but for the fact that I am supposed to have endeavoured to defend the Government against such an imputation on the occasion when this Bill was introduced. I am not surprised to find that my arguments were considered unsuccessful, as I am quite unconscious of having offered any with this object: it did not occur to me that the Government of India could be deemed responsible or that there was any necessity to defend it. But, as the point has now been raised, I must just say this—the imputation of responsibility on the part of Your Excellency's Government is based solely on the assumption that 'the Local Government *must* have kept them informed of all its proceedings,' and that therefore, well knowing the 'inconveniently wide' form of the indemnity offered, they confirmed it by their acquiescence. This assumption is not only unfounded but distinctly contrary to fact: the Government of India had no knowledge of the terms of the indemnity until after the criminating statements had been obtained.

"But then it is urged that, even apart from our own responsibility, the Civil Courts would not allow a principal—meaning Your Excellency's Government—to repudiate a guarantee given 'by inadvertence' by his agent. Now, if 'by inadvertence' is to be taken as equivalent to 'without proper authority,' this statement of the law is, to say the least, very questionable. I will not, however, stop to consider that point. It is enough for my purpose to say that, assuming the correctness of the principle enunciated, in the case supposed the utmost the Courts could do would be to award damages for any breach of the guarantee. To say nothing of other Members of your Government, Your Excellency yourself has distinctly stated that we intend to give pecuniary compensation to all those guaranteed officials who have been or may hereafter be dismissed. Until the precise measure of this compensation has been settled it is obviously idle to say, as some of the memorials do, that such dismissal will involve 'prospective poverty.' I am now able to announce that by a telegram which has just arrived the Secretary of State has authorised us to continue to these dismissed officials the full pay which they were receiving.

"A great point has been made of the precedent of the Masters in Chancery in 1725: it has been referred to as if it were absolutely binding. In the first place, it is somewhat significant that the only precedent is more than 160

years old and occurred 84 years before the Statute of 49 Geo. III was passed, though no doubt the Statute of Edw. VI was in force. I trust the purity of the administration has made considerable advances in the course of the last century and a half: we do not now regard official corruption as venial, but, in its true light, as one of the most heinous offences. Then, again, the Masters can only have been four or five in number. Their legitimate fees gave them a handsome income, they had no magisterial powers, and there was little reason to apprehend that they would abuse such powers as they possessed: whereas the indemnity which we are now considering was offered wholesale and actually passed to more than forty individuals invested with magisterial powers and, as I fear, by no means unlikely to abuse them. But the essential distinction between the Masters and the Mamlatdars seems to me to be this: the Masters obtained an antecedent statutory indemnity about the validity of which there could be no question, whereas the indemnity on which the Mamlatdars rely was admittedly *ultra vires* and the legislature is now called upon to decide whether or not it ought to be ratified in every case. It may well be doubted whether, even in 1725, Parliament would have consented to indemnify an unlimited number of officers against all possible loss; and, now that it has become necessary to appeal to the Legislature to validate and give effect to such a wholesale guarantee, it seems right that we should pause and consider whether it is one which we ought to ratify to its fullest extent and in every case without exception. My hon'ble friend has quoted a passage from the Sabha's address in which it insists that the evil of retaining in the service of the State all the incriminated officials cannot be compared with the evils which will result from a violation of the pledge illegally given by the Local Government. That is mere assertion, and an assumption of the very question which this Council is called upon to decide. I have already said that we are confronted by evils on every side; and the question is, in this conflict of evils what is the best course to be pursued? How can we best preserve the honour of Government and the sanctity of a plighted though improvident promise, and yet at the same time vindicate the purity of the administration and fulfil our obligation to provide impartial tribunals and protect Her Majesty's subjects from being placed at the mercy of a magistracy which has shown that it is not altogether free from the taint of corruption? It is natural that the Mamlatdars and their friends, and perhaps to some extent the classes of society from which they are drawn, should denounce a broken engagement as incomparably the greater evil; but would the raiyats and the humbler classes express the same view if they could make themselves heard? I certainly think not. At all events that is not the view

which has prevailed with the Government of India, nor will it, I think, commend itself to this Council. We feel that duty forbids us to follow the very simple and easy course of upholding the guarantee in its integrity, and we have resolved to undertake the infinitely harder task of discriminating between the officials who have shown such a want of moral rectitude or such weakness of purpose as to be unfit to be retained in any responsible post, and those from whom the money may be taken to have been extorted by actual pressure or undeserved threats. In the former case the letter of the illegal pledge must be broken; we cannot but apprehend that they will abuse a position which they have obtained by corruption: they will therefore be dismissed, but they will receive very ample compensation. But the guarantee will be preserved in its integrity in every case in which this is possible with due regard to the interests of the public at large.

"During the last few days I have been considering, with a view to discriminate between them, the individual cases of a large number of these Mamlatdars; and before I conclude I wish to notice two other points which have been very strongly urged on behalf of many of them. The first is that bribery was rampant, that unless there had been an organized system of purchasing offices the individual would never have dreamt of offering a bribe. This has been gravely urged as if in itself it were tantamount to extreme pressure, but it is obvious that it is nothing of the kind. No one would pay for what he can get gratuitously. It would be no defence to a charge of theft that the wrongful abstraction was the only means the thief had of acquiring the property which he desired. I am aware that many of these Mamlatdars only sought what they considered legitimate promotion, and I do not at all suggest that their offence falls within the same category as theft, although a man may commit even theft in respect of property to which he believes himself legitimately entitled. But I refer to theft only as a forcible illustration of a principle and to make it clear that no one can justify his purchase of a coveted office simply by showing that he could not have gained it without payment. The Government of India will require much more evidence of pressure than the mere existence of widespread corruption.

"The other argument is this—that the incriminated officials have not been put on their trial as the rules of the service require; that they ought to be formally charged with having paid money without extreme pressure and allowed to adduce evidence that they really paid under compulsion. If this argument is a sound one, if we are bound to hold an exhaustive enquiry in each case, there will be a very

serious prolongation of what has long ago amounted to a grave and deplorable scandal; but it seems to me that the argument is one which cannot be admitted for a single instant. Every one of these men has confessed to the commission of a criminal offence. Even those whose payments do not clearly come within the purview of the Statute are undoubtedly guilty under the Indian Penal Code, which they were pledged to administer righteously and effectually. The mere payment of the illegal gratification affords ample justification for their dismissal from the public service: it is only out of grace and policy and our wish to fulfil, as far as possible, even an illegal promise, that any one of them can be retained. And, if their retention is itself a matter of grace and policy, it follows that we are under no obligation to permit any further investigations: the question whether we will take extenuating circumstances into consideration at all, and, if so, to what extent and within what limits, is itself a matter of grace and policy also. As a matter of fact, however, I may say that in almost every case we intend to proceed on the facts as disclosed by the offender's own statement, and I do not see how he can complain of that. No doubt the result may be that those dismissed may not be the very worst offenders; but we cannot help that. Almost anything would be preferable to a further prolongation of the scandal, and, so far, we have only directed dismissal in those cases which the Bombay Government submitted first, and which may be presumed to be of the most glaring character."

His Excellency THE PRESIDENT said:—

"It certainly did not surprise me, any more than it surprised my hon'ble colleagues, to find that this measure, during the three weeks which have passed since it was introduced into Council, has excited a considerable amount of public discussion, and has encountered, from some quarters, a good deal of adverse criticism. The circumstances of the case are not of a kind which need render us particularly susceptible or ready to complain of such criticism. We have never represented the measure itself, or the arrangements by which it is to be accompanied, as more than the most hopeful settlement of a question full of difficulty in itself, and rendered still less easy of solution from the fact that the Government of India was not called upon to intervene until the eleventh hour, by which time the situation had become very seriously complicated. All that we claim is, as I ventured to point out the other day, that the solution which we have proposed is, upon the whole, the most reasonable one of which the circumstances admit, and the most just in regard to the various interests affected by our decision. If I were to be called upon to criticise the criticisms which have been directed against our action, I should be inclined to say that most of them were apparently made entirely with reference to the interests of

one of the parties concerned, and that the interests of all the rest appear to have been almost completely ignored. For we have a right to insist that in dealing with this important matter we had to take into consideration, not only the manner in which the reputation of the Bombay Government will be affected by a departure from the engagement offered to the inculpated Mamlatdars, but the duty which we owe to the people of this country, of whom we may surely say that their interests are largely involved in the maintenance of the purity of the public service which we have endeavoured to uphold. In respecting the engagement of the Bombay Government we have gone as far as we could, and I cannot help thinking that those who have taken exception to the course which we are about to adopt have not given us sufficient credit, either for the length to which we have gone in making good the guarantee under which these officials gave their evidence before the Crawford Commission, or for the motives which led us to stop short of a complete and literal fulfilment of that guarantee. In regard to the former of these points one would almost have supposed, from reading some of the observations to which publicity has lately been given, that it was the intention of the Government of India to make no attempt whatever to compensate the dismissed Mamlatdars for the loss of the emoluments of the offices of which they will be deprived. My hon'ble friend Mr. Hutchins has stated to Council how we propose to deal with this part of the case. Our proposals, which have received the consent of the Secretary of State, will, I cannot help thinking, be regarded as conceived in a most liberal spirit, and as affording the strongest proof of our desire to make good, to the utmost of our ability, the engagement of the Bombay Government.

"In regard to the argument that the guarantee, having once been given, should have been made good, even at the cost of retaining in public employment persons who, by their own admission, had incurred a statutory incapacity for serving the public, I will venture to make one observation only. I earnestly trust that those to whom this view of the case commends itself will consider carefully the import of the arguments which they may advance in support of their view, and the legitimate conclusion to which they will find themselves committed if they push those arguments too far. I own that it is not without misgivings that I have noticed the readiness which has been shown in certain quarters to assume that the Government of India, sooner than be a party to even a slight and limited departure from the guarantee given by the Bombay Government—a guarantee which, remember, has been held on the highest authority to be illegal and *ultra vires*—should have recourse to legislation for the purpose of retaining in official employment persons tainted with corruption. The reckless use of language of

this kind appears to me to show a complete disregard for the interests of that section of the community which, if these persons had not been deprived of their offices, would have depended upon them for the due administration of justice, and which would surely have had a right to complain if it had been called upon to submit itself to the judgment of functionaries whose integrity, after what has taken place, would always have remained liable to be called in question. This is, however, only one aspect of the case. But we run the risk of finding ourselves face to face with a much more serious one. It appears to me that those who contend that the conduct of which these dismissed officials have been guilty is not conduct deserving of serious reprobation, or calculated to unfit them for the discharge of important judicial and administrative functions, are striking a serious blow at the standard of public morality in this country. The argument is, in fact, this, that what would be regarded in other countries as a complete disqualification for the tenure of a position of public trust, or responsibility, is not so regarded in India; that public corruption is more tolerable here than it would be in England; and the inference is suggested that Native public opinion is callous or indifferent upon this point, and that we ought to be content that it should be so. I cannot conceive any line of action more calculated to have an unfortunate effect on the public mind here and elsewhere. It has been the policy of the Government of India to increase, from time to time, the opportunities offered to the Indian subjects of Her Majesty for serving the State in important and responsible positions. I for one rejoice that this should have been the case, and it is for this very reason that I should deplore any action on the part of persons, representing themselves to be the friends and spokesmen of the Natives of India, which might lead to the belief that public opinion here was lukewarm in regard to this all-important question of official purity. The Government of Bombay is given credit, and deservedly so, for the manner in which it attempted to deal with corruption when the person suspected was a high English official. I trust that the Government of India will at least not be censured for having declined to tolerate the continued presence in the public service of Native officials who have been shown beyond all doubt to be tainted with the same corruption."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE moved the following amendments in the Bill:—

In line 12 of the preamble, between the words "Council" and "statements" to introduce the words "and in the investigation and trial of certain criminal charges against one Hunmuntrao Raghavendra".

In line 5 of section 1, to substitute for the words "admission of an offence" the words "offence admitted by him".

In line 9 of section 1, to insert the words "preliminary to or" between the words "Council" and "in connection with".

At the end of section 1 to add the words "or in the course of the said investigation and trial."

He said:—"The first and fourth amendments are made at the request of the Bombay Government, who consider that the same indemnity which is given to witnesses in the Crawford case should be extended to those who gave evidence in the collateral proceedings against Hunmuntrao.

"The second amendment is suggested by the learned Advocate General of Bombay.

"The third merely supplies an accidental omission in the Bill as originally printed."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

OFFICIAL SECRETS BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to prevent the Disclosure of Official Documents and Information be taken into consideration.

His Excellency THE PRESIDENT said:—

"Our hon'ble colleague, Mr. Scoble, on moving for leave to introduce this Bill, expressed his opinion that a measure of the sort has long been required in India. That opinion I entirely share: I have seen enough during the comparatively short time which I have spent in this country to satisfy me that, unless legislation of this kind is resorted to, the interests of the public are likely to suffer materially. It is scarcely necessary to enlarge on the consequences which must ensue if the kind of treachery which is involved in the disclosure of official documents and information, and in the procuring of such information by persons interested in publishing it, is allowed to remain unpunished;

and I believe that it is absolutely necessary for the Government of India to hold in its hand a weapon which can, if necessary, be used with exemplary effect against those who are guilty of such practices.

"I trust, however, that I shall not be understood as suggesting that, in my opinion, it is upon punitive measures such as this that the Government of India should rely for the maintenance of that degree of secrecy which is indispensable for the proper conduct of certain classes of public business. I rejoice to think that those whose opportunities of divulging such information are greatest—I mean the members of the public service—deserve, as a general rule, the high reputation which they have earned for trustworthiness and discretion. The opportunities enjoyed by such persons for obtaining access to important public documents, and for making known their contents, are almost unlimited. Such information has, as we all know, an appreciable, and sometimes a very high, commercial value. We are well aware that persons are at all times to be found ready to encourage breaches of official confidence, and to throw serious temptations in the way of those who are in a position to commit them. It is, moreover, a matter of notoriety that what is sometimes spoken of as the enterprise of the public Press has of recent years, and not in India only, led to the encouragement of such misconduct. Under such circumstances it would be strange indeed if occasional breaches of good faith on the part of those whose daily duties afford them the means of acquiring official knowledge did not occur. This Bill will give us the power of punishing both the parties to such transactions,—the thief and the receiver of stolen goods,—and there is every reason to expect that the passage of the measure will have a salutary and deterrent effect.

"I may perhaps be permitted to enforce what I have said by referring to a recent case in which a particularly scandalous disclosure of official information has taken place. A Calcutta journal, the *Amrita Bazar Patrika*, in a recent issue published what professed to be the text of a document described as one 'the original of which His Excellency will find in the Foreign Office,' and as containing 'the real reason why the Mahárájá of Kashmir has been deposed.'

"The document purports to be a memorandum submitted to the then Viceroy, Lord Dufferin, by Sir H. M. Durand, the Foreign Secretary, in May, 1888, and runs as follows:—

'To His Excellency,—I do not agree with Mr. Plowden, the Resident in Cashmere, in this matter. He is too much inclined to set Cashmere aside in all ways and to assume that if we want a thing done we must do it ourselves.

'The more I think of this scheme the more clear it seems to me that we should limit our overt interference as far as possible to the organization of responsible military force in Gilgit. So far we can hope to carry the Durbar thoroughly with us. If we annex Gilgit, or put an end to the suzerainty of Cashmere over the petty principalities of the neighbourhood, and, above all, if we put British troops into Cashmere just now, we shall run a risk of turning the Durbar against us and thereby increase the difficulty of the position. I do not think this is necessary. No doubt we must have practically the control of Cashmere relations with those principalities, but this we already have. Indeed, the Durbar has now, since the dismissal of Lachmun Das, asked Mr. Plowden to advise the Gilgit authorities direct without reference to them. If we have a quiet and judicious officer at Gilgit, who will get the Cashmere force into thorough order and abstain from unnecessary exercise of his influence, we shall, I hope, in a short time, have the whole thing in our hand without hurting any one's feelings.'

"Up to this, the document is a substantially accurate reproduction of a minute actually written upon the above date by Sir Mortimer Durand, so much so that there can be no doubt whatever that it must have been communicated to the Press by a person who had had an opportunity of copying or committing to memory a part at all events of Sir Mortimer Durand's minute. A few words only have been misquoted, but they are not of material importance. I think Council will agree with me in considering that there is nothing in the passage which I have read which could be legitimately construed as revealing iniquitous designs upon the State of Kashmir on the part of the Government of India. It will no doubt be within the recollection of hon'ble members that, at the time when the minute was written, there had been considerable disturbances on the Gilgit frontier, that the Chiefs of Hunza and Nagar were in revolt against Kashmir, that Chaprot had been captured, and other places within the territories of the Mahárájá threatened by the insurgents, who had defied the Kashmir authorities.

"These events had shown in so striking a manner the insufficiency and weakness of the frontier administration of the Kashmir Durbar, that proposals were submitted by the then Resident for the purpose of coming to its assistance. With this object Mr. Plowden advised the appointment of an English Political Agent at Gilgit, and he was further of opinion that it might be desirable to send British troops into Kashmir. These were the proposals to which the Foreign Secretary, in the document of which I have just read a part, took exception, and in the passages which follow in the original minute, which I have lately examined, I find that his objections to the Resident's proposals were throughout based upon the reason which he assigned at the outset,

namely, that Mr. Plowden was disposed to rely too much upon British intervention, and not enough upon the efforts of the Durbar. Sir Mortimer expresses his belief that we should 'be able to improve and strengthen the position of the Kashmir authorities'; that any officer whom we send up 'should act with the consent and assistance of the Durbar'; that 'he should not take command of the Kashmir troops or get up any military expeditions'; and he was to 'give advice to the Governor in his present military difficulties' only 'if the Durbar wishes it'.

"Will it be believed that the whole of the portion of the minute from which I have taken these extracts has been omitted or suppressed, and that in lieu of it has been inserted the passage which I shall now proceed to read:—

'Altogether I think our first step should be to send up temporarily and quietly a selected military officer (Captain A. Durand of the Intelligence Department) and a junior medical officer. Both of them will have the support of the Durbar when and where it will be necessary, and they will not display any indiscretion, so that the Durbar may not have any hint of the work they are about to undertake, and they will have to obtain the consent of the Durbar in matters concerning military difficulties. Once we can establish a belief that our undertaking is nothing but the welfare of the Durbar, we are surely to attain our object. Time will show that my view is not a wrong one. In it lies, I venture to hope, the safe realisation of that object which was once contemplated in Lord Canning's time and afterwards it was abandoned after deliberation.'

"This extract, with the exception of the first line and a half, in which it is recommended that an officer should be sent up temporarily to Gilgit, is a sheer and impudent fabrication. Not only is it not to be found in Sir Mortimer Durand's minute, but it misrepresents him in all the most essential particulars. It has thus come to pass that, on the one hand, important passages of Sir Mortimer Durand's minute have been altogether suppressed, and, on the other, words have been ascribed to him which he not only never used, but which convey a meaning absolutely inconsistent with those which he actually wrote.

"I have already called attention to the suppression of those parts of the minute which most strikingly illustrate the moderation of the policy which found favour with the Foreign Secretary and which was approved by the Viceroy. When we come to the passages for which the writer has drawn upon his own imagination, we find a series of unfounded statements expressed in language which those who are familiar with Sir Mortimer Durand's style would not for a moment mistake for his, and abounding in suggestions to the effect that our policy in regard to Kashmir was governed by motives of

the most sinister kind. Of such a description are the passages in which it is said that the officers sent to Gilgit are to conduct themselves 'so that the Durbar may not have any hint of the work that thay are about to undertake', and the statement that, 'once we can establish a belief that our undertaking is nothing but the welfare of the Durbar, we are surely to attain our object',—an object which is subsequently described as that 'which was contemplated in Lord Canning's time, and afterwards it was abandoned after deliberation.'

"The newspaper version of the minute ends with the following words:—

'Eventually Major Mellis should go to Cashmere on the part of the Durbar and submit a mature scheme for the better administration of the State, which is at present very badly managed indeed. This scheme should include the outline of our arrangements for strengthening the Government policy.

'After the expiry of six months we will be in a position to decide whether the permanent location of a Political Agency at Gilgit, also a contingent of troops for the defence of the frontier for which the Durbar have already agreed to put their resources and troops at the disposal of the British Government.

'(Sd.) H. M. DURAND,

'6th May.

'Very well.

'(Sd.) DUFFERIN,

'10th May.'

"Upon these passages I have only to observe that the earlier portion is rendered with complete inaccuracy, Sir M. Durand never having recommended that Major Mellis should submit a scheme for the administration of the State, but merely that that officer should at a later date go to Kashmir in order to confer with the Durbar in regard to its offer of aid for the defence of the frontier. The concluding sentence is a pure fabrication, none of the words after 'policy' appearing in the original minute. The latter, I may add, received the Viceroy's approval, although not in the terms mentioned in the fabricated version.

"I have shown already what were the objects with which the Government of India proposed, in 1888, to intervene in the affairs of Kashmir, and

within what narrow limits Sir Mortimer Durand, with the Viceroy's approval, was prepared to restrict that intervention; and it is unnecessary for me to point out how full of mischievous and misleading suggestion are the passages which I have quoted from the spurious portions of his supposed minute.

"The responsibility which rests upon those who are ready not only to give to the public documents which they are well aware could not have been obtained except by a distinct and criminal breach of trust, but who are not even at the pains to satisfy themselves that these documents are genuine, is a very serious one.

"In the present instance the spurious information can have been published with no other object than that of persuading the people of this country that the recent action of the Government of India in Kashmir has been prompted by motives which have been repudiated in official documents of the first importance as well as by the public statements of the Secretary of State in the British Parliament. Not content with persistently misrepresenting the Government of India, the publishers of the article have not scrupled to present to the public a garbled version of a confidential note, written more than a year ago, in order to give an entirely distorted account of the then view and actions of the Government. Neither then nor at the present time has it been the desire of the Government of India to promote its own interests at the expense of those of the Kashmir State; then, as now, it was our desire to see that State well and wisely governed, with a minimum of intervention on our part, and without any ulterior designs upon its independence. I am not without hopes that the sincerity of our motives will in process of time come to be understood even by those who have been misled by the persistent misrepresentation which has taken place in connection with these matters, and I believe that an exposure of the practices to which our critics have not scrupled to resort in the present instance may have the effect of, in some degree, opening the eyes of the public as to the methods which have been adopted for the purpose of prejudicing its judgment in regard to this important case.

"I have thought it my duty to bring this matter to the attention of the Council, both for the purpose of affording an illustration of the kind of malpractice against which the Bill on the table is directed, and also because I think it should be generally known that the new law is intended to be put in force in such cases, and that those who publish official documents without authority will come within its scope, whether the persons by whom those docu-

ments have been divulged are discovered or not, and whether the documents themselves are published in their entirety or, as in the present instance, reproduced in a garbled and truncated form."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 24th October, 1889.

J. M. MACPHERSON,

Offg. Secretary to the Government of India,

Legislative Department.

SIMLA;
The 18th October, 1889.

G. C. Press, Simla.—No. 491 L. D.—18-10-89.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 24th October, 1889.

PRESENT:

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E., *presiding.*
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Muhammad Ali Khan.
The Hon'ble R. J. Crosthwaite.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. CROSTHWAITE moved that the Report of the Select Committee on the Bill to amend the Central Provinces Land-revenue Act, 1881, be taken into consideration. He said :—

"I have a few remarks to make with regard to objections which have been made against some of the provisions of the Bill.

"It has been objected that the Land-revenue Act, 1881, should not be extended to the scheduled districts. It has been said by the Málguzárs Association, Nágpur, that it is unfair to deprive the proprietors in the scheduled districts of the privileges conferred on them by special legislation, and some landlords of the Hoshungabad District urge that the extension of the revenue law to those districts will deprive the zamindárs of their vested rights in land by the creation of subordinate rights. To these objections I have to say, first, that no privileges have been conferred by special legislation on the proprietors as such of estates which have been made scheduled districts. The zamindárs who own these estates are not independent chiefs, but ordinary subjects of the Crown, and the Scheduled Districts Act, 1874, confers no privileges on them. On the contrary, it may be said to deprive them of privileges enjoyed by the rest of the

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community. Laws for the scheduled districts may not only be enacted in the regular way by the Governor General in Council, but the Act also allows the Local Government, with the previous sanction of the Governor General in Council, to declare what enactments are or are not in force in the scheduled districts, and to extend to a scheduled district any enactment which is in force in any part of British India. Moreover, in a scheduled district the Local Government can under section 6 of the Act appoint officers to administer civil and criminal justice, and to superintend the settlement and collection of the revenue and all matters relating to rent, and it can regulate the procedure of the officers so appointed. I cannot understand, therefore, how the extension of an Act by means of the Bill before the Council, which extension could be also effected under the Scheduled Districts Act, can be said to deprive the zamindárs of privileges conferred upon them by special legislation. As to the objection that the extension will by the creation of subordinate rights in land deprive the zamindars of their vested rights, this might perhaps be urged against the extension of the Central Provinces Tenancy Act, 1883, but not against the extension of the Land-revenue Act. The latter Act will not deprive zamindárs of their vested rights in land. It is necessary to have some procedure for the settlement and collection of land-revenue, and it is, I think, in the interests of the zamindárs that this procedure should be contained in an Act of the legislature, instead of having to be sought for in Acts and Regulations extended to the scheduled districts, and in orders issued by the Local Government. Why the scheduled zamindáris were excepted from the operation of the Land-revenue Act of 1881 is not clear. Apparently in the first draft of the Bill which afterwards became the Land-revenue Act provision was made for excepting local areas which might be considered to be in too backward a state for a revenue law. Afterwards, it would seem that as these zamindáris were scheduled districts they were considered to be in a backward condition and were excepted from the operation of the Act.

"In his letter dated the 11th of August, 1874, regarding the Bill which afterwards became the Scheduled Districts Act, 1874, the Chief Commissioner of the Central Provinces said, that the districts which he wished to have scheduled were, as a rule, the wild and remote zamindári areas, the difficulty of administering which under the law presented itself from time to time in one form or another, and must continue to arise so long as the tracts are subject to an elaborate and technical system which it is impossible to adapt to their existing circumstances. He added that the list of districts which he wished to have scheduled comprised estates which, being distant and incapable of management under any strict administration of the Regulations and Acts, he proposed to administer under special rules. The

selection, he continued, had been confined to remote zamindáris which it was impossible to administer satisfactorily in any other way. I have already mentioned when introducing the Bill that it is impossible now to say that the zamindáris which are scheduled districts are in such a backward or peculiar condition that the revenue law in force in other zamindáris is unsuitable to them. Out of 18 zamindáris, for instance, in the Sambalpur District, four were scheduled, and these four are neither the most remote nor the most backward. The Bengal-Nagpur Railway will pass through two of them; the third (Phuljhar) is connected by the main road with Raipur and with Sambalpur; and that and the fourth (Bora Sambhar) are among the most advanced of the zamindáris. Moreover, since the Scheduled Districts Act was passed, a number of laws have been declared to be in force in, or enacted for, the scheduled zamindáris. The Specific Relief Act, the Code of Civil Procedure, with the exception of a few provisions, the Criminal Procedure Code, the Registration Act, the Indian Forest Act, the Opium Act, the Excise Act, the Negotiable Instruments Act, the Indian Trusts Act, the Transfer of Property Act, the Easements Act and the Indian Companies Act, and many other Acts are all in force in those zamindáris. It is therefore impossible to understand how they can be said to be too backward for the extension of the Land-revenue Act or how it can be for the interest of the zamindárs to have the revenue-administration of their estates subject to executive rules and orders instead of an Act of the Legislature.

"There is one objection which it will be as well to refer to in order to remove a groundless apprehension. In a petition laid before the Council the Rájá Durjan Singh of the Chhattar estate objects to the extension of the Land-revenue Act because the extension could not be made consistently with the sanad granted to him. I need scarcely say that the Land-revenue Act will not in any way interfere with privileges which may have been conferred on the Rájá with respect to the amount of tribute or takoli, the right to the revenue from opium, drugs and spirits, the pándhari-tax and cattle-pounds, or the proceeds of the sale of unclaimed property.

"The objections taken by the landlords to the definition of sír-land have been principally based on a misapprehension of the effect of the definition combined with section 19 of the Bill. I need only say with respect to these objections that the Bill will not reduce the amount of sír-land to one-quarter of the cultivated area of the mahál. It will be possible to hold the whole mahál as sír-land. All that section 19 proposes to do is to allow, subject to a prescribed limitation, the conversion into sír-land of land which was at the preceding settlement recorded as tenant's land, that is to say, of land which was ordinarily let to and cultivated by

tenants. As regards land which is sír-land, the proprietor will retain all except such as may be unoccupied by him when the Bill becomes law and had been unoccupied for six consecutive years. The section provides that land is occupied by the proprietor when it is leased out with an express reservation of his sír-rights, and when it is occupied by a person to whom he has assigned his proprietary rights, as, for instance, a mortgagee or lessee for a term. In altering the définition of sír-land it is impossible so to legislate that no case of hardship may occur, but I think that the definition in the Bill will as far as possible secure the existing rights of both landlord and tenant, and that it will, if anything, be favorable to the landlord.

"With regard to sections 15 and 16 of the Bill as introduced, which have been amended by the Select Committee, I may say, in answer to objections which have been taken, that there was never any intention of applying the principle of fluctuating assessments to the ordinary cultivated mahâls. What was required was a power to assess forest-mahâls according to the annual value of the produce or in the form of rates chargeable on the produce of the forest.

"The new section 124A (section 22 of the Bill), which gives the Chief Commissioner power to make rules for the management of forests, has been objected to as unnecessary. It is said by the Málguzárs Association of Nágpur that no case has been made out to justify such a power. I will mention two cases. In 1885 the Deputy Commissioner of Nágpur reported that the málguzár of Munsar had given a contract for the cutting and removal of the wood in the forest-land of his mahál. The villagers had rights in this forest-land and those rights were interfered with by the cutting of the wood; but, in spite of the intervention of the Chief Commissioner, the málguzár continued the cutting, and the hills were completely stripped of all timber and brushwood. In another case the Forest Conservator reported that a zamindár had sold for ten rupees the right to collect resin from his forest. The resin is obtained by girdling the trees, and the Conservator found that in about four square miles of forest every sál tree had been killed outright by the process. The forest thus destroyed was a fine one. The zamindár received ten rupees, and the purchasers of the right to collect resin realised, it is calculated, upwards of 1,200 rupees. Other cases of the wrongful or wanton destruction of forests might be cited, but these two, are, I think, sufficient to justify the enactment of this provision. The principle that the Government has a right to interfere for the protection and preservation of forests in the interest of the owners and the people generally has, I may say, always been recognized in the Central

Provinces. The Bill does not propose to give the Government power to make rules regarding the control and management of all forests, but only of those which the proprietors are bound by a record-of-rights, sanad or agreement with the Government to manage in accordance with rules or instructions prescribed by a Government officer. With respect to the objection that the penalty for contravening the rules is oppressive, I would observe that the Chief Commissioner is not bound in every instance to put all the penalties in force. He can, under section 162 of the Act, impose a fine for a breach of the rules, and this and the confiscation of timber or other forest-produce cut or removed in contravention of the rules will probably be found sufficient in all ordinary cases to secure their observance.

"The only other matter which it is necessary that I should mention is the amendment of the law regarding patwáris. This amendment has given rise to some discussion, and it will be well therefore to explain what change is actually made in the present law.

"The Bill repeals section 145 of the Act, a section which was intended to enable the Government to secure the proper performance of the duties of the patwári in places where at the last settlement the maintenance of a patwári was left optional with a proprietor. The state of things for which this section was intended to provide exists now only over a limited area. Most of the proprietors who had the option of maintaining a patwári have preferred to pay patwáris' fees and accept the appointment of a patwári in the usual way. It is considered therefore advisable to withdraw the power conferred by section 145 of the Act of fining proprietors or of appointing patwáris when the duties of a patwári are not duly performed by the proprietors, and to empower the Chief Commissioner to appoint patwáris in the few and unimportant tracts in which there are now no regular patwáris.

"This is, in my opinion, the only real change made in the existing law by the Bill. The liability of all proprietors and tenants to pay patwáris' fees is now clearly declared, and the use of these fees to defray charges incurred on account of the proper supervision and maintenance of patwáris' records is legalized. Both of these matters were, I think, within the intention of the Act. That the proprietors of revenue-free land were intended to pay patwáris' fees is shown by the proviso to section 144 of the Act, which expressly mentions land held free from revenue, and there can be no doubt that it was intended that all other proprietors were, unless specially exempted at the settlement, bound to pay such fees. That it is necessary to have patwáris and correct village-records in a

country in which the rights of landlords and tenants depend so much on the accuracy of those records cannot, I submit, be disputed. It is not possible to secure the efficient discharge of their duties by patwáris without supervision, and their records will be of little use unless they are properly corrected and maintained. The employment, therefore, of the patwári fund for the purpose of providing this supervision, correction and maintenance may, I think, be fairly said to be within the contemplation of the Act, and requires no justification. The Bill makes no change with respect to the limit of the rate which can be imposed for the remuneration of patwáris."

The Hon'ble SIR CHARLES ELLIOTT said :—

"I propose to make a few remarks on the Bill, chiefly because of my former connection with the province when I was Settlement-officer of the Hoshangabad District about 25 years ago. My authority has been referred to in some of the papers before the Council, and I have also received some direct applications from old friends and sons of old friends among the Hoshangabad landowners entreating me to see that the rights conferred on them by my settlement were not taken away or diminished by this Bill. I wish therefore to say that I have very carefully examined all its provisions, and have satisfied myself that there is nothing which is either contrary to justice or is injurious to any privilege or prescriptive right which is known to exist and to be reasonable. After what has been said by the Hon'ble Mr. Crosthwaite I need not enter at any length into the provisions of the Bill, and will confine my remarks to two salient points in it—the definition of sír-land, and the treatment of forest-mahâls. All Revenue-officers in Upper India know that there is no more difficult crux in settlement questions than the proper treatment of sír, because it involves the holding a just balance between the rights of landowners and the rights of tenants. On the one hand, the landowner desires to enlarge his holding, both for the sake of providing for the employment of an increasing family and of preventing the accretion of tenant-right. On the other hand, the tenant who cultivates and pays rent for land thinks it very hard that no occupancy-right can accrue to him in field *A*, because it is earmarked as sír, while it does accrue in the adjoining field *B*, which is not so designated. When the North-Western Provinces Revenue Act, XIX of 1873, was being drafted, I was one of those engaged on the work. We had a great deal of discussion over this question, and finally adopted a definition which has, I believe, been considered satisfactory. Sír is there defined as land which has been so recorded at the last settlement or has been cultivated by the landowner for twelve consecutive years, and is so cultivated at the time the settlement-record is prepared. The pre-

sent Bill, which in many important respects follows the North-Western Provinces Act, adopts the same definition but adds the clause that if waste-land has been broken up by the proprietor and cultivated for six years it becomes sír. This is a very proper clause in a country with so much waste-land as the Central Provinces. But lest the proprietor should get too much land into his hands by cultivating for twelve or for six years, and then when it has become sír letting it out and going on to cultivate other land, and so by degrees taking up the whole village area in rotation and extinguishing tenant-right, there is a further condition imposed by section 19 of the Bill that the landowner cannot add to the sír-land so recorded at last settlement a larger area than is equal to 25 per cent. of the entire village area. There is of course no essential principle involved in the selection of the figure 25 per cent., but it seems to be a reasonable compromise between landowner and tenant in a country where cultivating proprietary brotherhoods are hardly known to exist, if they do exist at all; and, as far as I can see, the reasonableness of the figure has been accepted by most of those who have commented on the Bill.

"The second point I wish to touch on is the treatment proposed for forest-mahále. If the owners voluntarily agree to submit the forests to proper management under the established rules of forest-conservancy, or if by any covenant or sanad they are bound to do so, then it is provided that any proprietor who violates such rules, as for instance if he fells recklessly and destroys a whole forest for the sake of its timber, may be excluded from the management of the mahál. If, on the other hand, he neither agrees nor is bound to abide by those conservancy-rules, then he is not to profit too much by his greed or folly, and the State will claim a share in the money he receives from such clearances, which is really an anticipation of the revenue due in future years. The Hoshangabad zamindárs have objected to these provisions, and have appealed to me to protect their rights; but, as I understand the question, these provisions will hardly affect them at all. There are no estates which are technically called forest-mahåls in Hoshangabad. The arrangement there made by me as Settlement-officer was this: when the nominal village-boundaries included a great deal of waste or forest land, then a certain sufficient amount, generally three times the cultivated area, was marked off for the use of the village, and the boundaries were so laid down as to include this and to exclude the balance, which was then termed Government forest, and has now, under the more precise nomenclature of the Forest Act, been designated either reserved or protected forest. The waste or forest lands included in the village areas were settled with the proprietors as an appanage of the cultivated land, and certain

conditions were laid down in the record-of-rights to define the terms on which proprietors and tenants might graze cattle, collect firewood, or cut down trees and break up land in these wastes. These are not the mahâls referred to in section 15, which lie, I believe, almost entirely in the Bhandara District and the Chhattisgarh Division, and are in the hands of large zamindárs who hold the lands on sanads, which in some cases include conditions about proper forest-management, and in some cases through inadvertence do not contain them. It is principally to remedy this inadvertence that the section has been inserted, and it seems to me to be a very useful condition. I only wish that some such provision had existed in past years to prevent the forest-clearances round Simla and along the southern slopes of the Himalayas abutting on the Punjab plain. The only provision which affects the Hoshangabad zamindárs is that contained in section 22, that if any one violates the conditions of the record-of-rights he may be excluded from the management of the forest-land. The Hon'ble Mr. Crosthwaite has given an instance of flagrant violation of the rules in the Nagpur District, and has shewn that the Chief Commissioner need not put in force the full penalty provided, unless the proprietor is contumacious and persists in carrying on a prohibited course of action. I do not think that any reasonable and law-abiding proprietor need fear the operation of this section."

The Motion was put and agreed to.

The Hon'ble MR CROSTHWAITE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. CROSTHWAITE also moved that the Report of the Select Committee on the Bill to amend the Central Provinces Tenancy Act, 1883, and the Central Provinces Local Self-government Act, 1883, be taken into consideration. He said :—

"There are only two matters on which I need trouble the Council. The first is the extension of the Central Provinces Tenancy Act, 1883, to the scheduled districts. I have already explained that these scheduled districts were zamindáris which were supposed to be in such a peculiar and backward condition that they could not be administered under the same law as other zamindáris, and I have endeavoured to show that they cannot be said to be in such a condition now. In the scheduled zamindáris the Bengal Rent Act, X of 1859,

is now in force. This Act was applied to the Central Provinces as a mere temporary makeshift, because a rent law was urgently required, and not because it was suited to the conditions and requirements of the country. Its provisions are undoubtedly at variance with the customs of the people. The principle that every tenant other than an occupancy-tenant or a tenant holding under a lease is merely a tenant-at-will, and that an occupancy-right could be acquired by cultivating land for twelve years, was quite unknown in the zamindáris. By the general custom of the country, especially in the wilder tracts, the tenant had a fixity of tenure so long as he paid a fair rent. This is the main principle on which the provisions of the Central Provinces Tenancy Act are based. Except in so far as the provisions of Act X of 1859 have affected the rights of tenants in the scheduled districts, there is no difference between the customary tenures of the scheduled, and those of the non-scheduled districts. The Government has conferred the proprietary right in the land on the zamindárs, and it is bound to provide for the interests of the cultivators. This provision can best be made by the extension of the Central Provinces Tenancy Act to the scheduled districts, and the zamindárs will not be deprived of any of their rights by the extension. That Act prevents a landlord from arbitrarily enhancing the rent of his tenant and ejecting him, but it cannot be contended that a zamíndár has a vested right to deal in this manner with the cultivators of his estate. I submit, therefore, that the repeal of Act X of 1859, which is admittedly unsuited to the requirements of the scheduled districts, and the extension to those districts of the Tenancy Act of 1883, which is found to meet the requirements of the rest of the Provinces, are fully justified.

"The other question about which I wish to say a few words is the provision contained in section 8 of the Bill regarding cultivating in partnership. This provision has been very carefully considered by the officers of the Commission and by the proprietors of land, and a great deal of information regarding the practice of cultivating in partnership has been obtained. It appears that in some parts of the country the landlords occasionally cultivate in partnership with a raiyat instead of letting land to him as a tenant, because the raiyat has no means of cultivating and requires seed-grain and bullocks to be provided for him, and because it is found more profitable to give him an interest in the produce of the land than to employ him to cultivate it as a labourer. Against this occasional cultivation in partnership there can be no objection and it should not be interfered with. But it also appears that in some parts of the country there is at least a tendency to adopt the practice of cultivating in partnership in order to prevent the acquisition of tenant-right and to rackrent the

raiyats. Instead of letting the land, the landlord makes the raiyat his partner for the purpose of cultivating it. The raiyat is bound to borrow his seed-grain from the landlord and to pay a high interest on it. He can be turned out of the land at the end of the year when the partnership terminates, and the landlord has it, therefore, in his power to exact the greatest possible share of the produce. The raiyat is nominally a partner, but in reality he is a rackrented tenant. If such a practice is largely resorted to, it should, in the interest of the raiyats, be put a stop to; and provision has therefore been made in section 8 of the Bill to enable the Local Government to interfere and declare that in any particular local area raiyats cultivating in partnership with the proprietor of land other than sír-land shall be ordinary tenants. Unless then the practice of cultivating in partnership with raiyats is abused, proprietors will not be interfered with.

"Several valuable suggestions have been received as to matters in which the further amendment of the Central Provinces Tenancy Act of 1883 is said to be desirable, but they do not fall within the scope of the present Bill, the main object of which was to amend the Tenancy Act so as to make its provisions agree with the amendments made in the Central Provinces Land-revenue Act of 1881 by the Bill which has just been passed."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

CENTRAL PROVINCES MUNICIPAL BILL.

The Hon'ble MR. CROSTHWAITE also presented the Report of the Select Committee on the Bill to make better provision for the Organization and Administration of Municipalities in the Central Provinces.

CENTRAL PROVINCES VILLAGE-CONSERVANCY BILL.

The Hon'ble MR. CROSTHWAITE also presented the Report of the Select Committee on the Bill to make better provision for Conservancy in Villages in the Central Provinces.

ACT XXXVI OF 1858 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS presented the Report of the Select Committee on the Bill to amend Act XXXVI of 1858 (*Lunatic Asylums*).

The Council adjourned *sine die*.

J. M. MACPHERSON,

Offg. Secretary to the Government of India,

Legislative Department.

SIMLA;
The 25th October, 1889.

G. C. Press, Simla.—No. 522 L. D.—25-10-89.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 13th December, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Churn Laha, C.I.E.

The Hon'ble G. H. P. Evans.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Sir A. Wilson, Kt.

NEW MEMBER.

The Hon'ble SIR ALEXANDER WILSON took his seat as an Additional Member.

RAILWAYS BILL.

The Hon'ble MR. SCOBLE moved that the Hon'ble Mr. Crosthwaite, the Hon'ble the Mahárájá of Vizianagram and the Hon'ble Sir Alexander Wilson be added to the Select Committee on the Bill to consolidate, amend and add to the law relating to Railways in India.

The Motion was put and agreed to.

CHARITABLE ENDOWMENTS BILL.

The Hon'ble Mr. SCOBLE also moved that the Bill to provide for the Vesting and Administration of Property held in trust for charitable purposes be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins, the Hon'ble Sir D. M. Barbour, the Hon'ble Syud Ameer Hossein, the Hon'ble Rájá Durga Charn Laha, the Hon'ble Mr. Evans and the Mover.

The Motion was put and agreed to.

CENTRAL PROVINCES MUNICIPAL BILL.

The Hon'ble MR. CROSTHWAITE moved that the Report of the Select Committee on the Bill to make better provision for the Organization and Administration of Municipalities in the Central Provinces be taken into consideration. He said:—

"Since the Bill was introduced it has been carefully considered by the officers of the Central Provinces and by the municipal committees, and there is a general agreement of opinion that its provisions are suited to the requirements of the province and will effect a valuable improvement in the law.

"It will be in the recollection of the Council that on a former occasion I explained that there was no intention of materially changing the constitution of the municipalities in the Central Provinces or of introducing new principles. It has been found necessary to legislate because the existing Municipal Act of 1873 is no longer sufficient to meet the requirements of municipal administration. That Act is a short Act of twenty-three sections, which gives large powers to the Local Government and provides in very general terms for taxation and expenditure. As regards the powers of committees for sanitary purposes and the definition of offences against the municipal law, it leaves almost everything to be provided for by rules to be made under the Act and to be confirmed by the Local Government. Such a measure was well adapted for the commencement of municipal institutions, when it had not been ascertained by actual experience what forms of taxation were most suitable, what powers were required by municipal committees, and what powers might be safely conferred upon them. It was necessary, therefore, to confer powers in general terms, to leave much to be done by rules, and to give a wide discretion to the Local Government. But now that the people have

become accustomed to local self-government it is expedient that the responsibility of governing their towns should rest more extensively on municipal committees, and that their powers should be more precisely defined and should be capable of more independent exercise. Moreover, with increased prosperity and the growth of the towns, new wants have arisen which must be provided for, and matters which in former days adjusted themselves, or were adjusted by the authorities without law, cannot now be dealt with unless the Legislature confers the necessary powers.

"In preparing the measure which is now before the Council, the Local Administration had the advantage of the experience gained by many years of municipal government, and the municipal laws in force in the North-Western Provinces, the Punjab and other parts of India afforded also valuable assistance in framing a municipal law for the Central Provinces. The Bill retains the present constitution of the municipalities, and it adopts, with such changes as local circumstances render necessary, those provisions of the municipal law of the North-Western Provinces and the Punjab which are required for the full development of municipal administration, and which are, in the Chief Commissioner's opinion, suitable to the conditions obtaining in the Central Provinces.

"The Bill, my Lord, has not been materially altered in Select Committee, and there are only a few provisions with regard to which it is, I think, necessary for me to make any remarks. It was suggested by some of those who gave opinions on the Bill that, as the municipalities had made so much progress and the committees had acquired so much experience in local self-government, advantage should be taken of this opportunity to alter the constitution of municipalities by providing that a larger proportion of members of a committee should be persons other than salaried officers of the Government, and in this way to make the committee more really a self-governing body. It was said that under the existing law there is a danger that the official members of a committee may have too much power and may interfere with the free action of the non-official members. After carefully considering this question, the Select Committee decided that it was not expedient to amend the law in this respect. The law is that not less than two-fifths of the members of the committee shall be persons other than salaried officers of the Government, but it is not necessary to have a single salaried officer of the Government on the committee. If the people wish to elect a majority of such officers, there is no reason why they should not be allowed to do so within certain limits. Moreover, comparing the provisions of the Bill with the provisions of the Municipal

Acts in force in other Provinces, it does not appear that the rule for the Central Provinces is calculated to give the committees there more official members than can be appointed for committees in other provinces. In the North-Western Provinces, the Punjab and Burma there is no limit imposed on the number of Government officers who can be elected members of a committee. The limitation is only provided in the case when the members are appointed otherwise than by election. In the Bill now before the Council the rule that not less than two-fifths of the members of a committee shall be persons other than the salaried officers of the Government applies in every case whether appointments are made by election or by nomination. Having regard also to the circumstances of the Central Provinces, it was considered inexpedient to enact that the non-official members of a committee shall in all cases be more than two-fifths of the whole committee. There may be municipalities in which such a rule, if enacted, would cause the greatest inconvenience and deprive the municipality of the services of its most useful members. In framing an Act which is to apply to municipalities of all kinds some discretion must be allowed to the Local Government, which must be trusted to use that discretion rightly and in accordance with the principles laid down by the Government of India.

"It would seem from what has been said in one or two of the opinions on the Bill that there is some misapprehension as to the provisions of sections 40 and 41 relating to the municipal police. It will be therefore as well to explain that section 40 follows the existing law in imposing on the committee the obligation of maintaining the police-establishment, and that section 41, which is taken from the Punjab Municipal Act, 1884, empowers the Local Government to relieve any committee of the whole or a part of the cost of the police-establishment on the condition that the committee shall pay, or spend on objects to which the municipal fund can be applied, a sum not exceeding the cost of the police-establishment which the Government undertakes to maintain. As a fact municipalities have, in accordance with the instructions of the Government of India, been relieved of the cost of the municipal police, and the sections make no change in this respect, but are in accordance with the existing state of things.

"I have a few words to say with respect to Chapters V and VI of the Bill, which contain provisions regarding the powers of a committee for sanitary and other purposes, and regarding offences against the municipal law. Here the Bill follows the Punjab Municipal Act, 1884. When that

Act was before the Council the question whether these matters should be left to be provided for by rules made under the Act, or should be provided for by enactments contained therein, was fully considered, and it was decided that the latter course should be adopted. There can be no question that if it is intended to confer on municipal committees important powers for sanitary purposes, such as powers regarding the building of houses, the regulation of burial and burning places and of slaughter-houses, the entry and inspection of houses, and the control of places used for carrying on dangerous or offensive trades within a municipality, it is expedient to confer these powers by express enactment and not to leave them to be provided for by rules. Municipal committees would necessarily seldom be equal to the task of framing rules on such matters. So also I think it will be generally admitted that the definition and punishment of offences against the public health, safety and convenience should, in the interests of the public, be provided for by the Legislature instead of by municipal committees. The only objections to the withdrawal of the power to provide by rule for these matters are that the Legislature will probably omit to provide for the prevention of some acts which, in consequence of local peculiarities, may in some places amount to a nuisance, and that the inclusion of so many provisions with regard to powers and offences renders the Municipal Act too lengthy and elaborate. I do not think that these are weighty objections. The circumstances of the Central Provinces have been considered in framing the chapter on offences, and all local peculiarities have as far as possible been provided for. If there should happen to be a nuisance which is not included in the chapter, it will probably amount to a public nuisance punishable under the Indian Penal Code, or else it will be a private nuisance which only affects an individual and with which the municipal committee should not interfere. The answer to the second objection is that given by the Hon'ble Mr. Ilbert when the Punjab Municipal Act was under consideration. If the powers of committees and the offences against the municipal law are left to be provided for by rules, the Municipal Act is shortened, but the law which will have to be administered is to be found, not in the Act alone, but in the Act plus the rules made under it, and the more you put into the Act the less you will have to put into the rules. 'My belief,' he said, 'is that by adding to the bulk of the Act, and thereby reducing the bulk of the rules, we have made the law more and not less easy to work.'

"There are a few amendments made in the Bill in Select Committee which I think I should mention. By section 65 power was given to the committee to

enter and inspect places used for the sale of articles intended for food or drink for man, to examine such articles, and to seize them if they appeared to be unfit for the consumption of man. It has been found that in some places there is a practice of carrying about meat for sale, and it was apprehended that in this way diseased meat might be sold notwithstanding the provisions of section 65. We have therefore added to the first sub-section of section 84 a clause (*l*) giving the committee power to make rules for prohibiting the offering of meat or any specified description of meat for sale except at a shop or stall or in a market. We have also in clause (*m*) of the same section given to the committee power to control and regulate the duties of sweepers employed by it and to prescribe the conditions on which they may withdraw from employment. This provision was suggested by the Nagpur Peoples' Association and by some of the persons consulted on the Bill. The sweepers who are employed by a committee for purposes of conservancy have it in their power, by suddenly refusing to work, to cause very great inconvenience, and we considered that it would be reasonable and proper to empower the municipality to regulate the duties of sweepers and prescribe the conditions on which sweepers who undertook conservancy work in a town might withdraw from their employment. Another important amendment made is the insertion of section 145 of the Bill, which is taken from section 170 of the Punjab Municipal Act, 1884, and gives to the Local Government power to except any municipality from any provisions of the Act which are in the opinion of the Local Government unsuited thereto. I need scarcely say that the necessity for this section arises from the fact that the municipal institutions in the Central Provinces are in different stages of growth. Some committees, such as those of Nagpur, Jubbulpore and Raipur, are capable of exercising all the powers conferred by the Bill; others require control and guidance. If, moreover, it is thought advisable to create a new municipality, it may not be expedient to place it at once on the same footing as the committee of a large town where municipal institutions have been in existence for years. It may also be the case that some provisions of the Act may, owing to local peculiarities, cause inconvenience in a municipality, and it is desirable, therefore, that the Government should have the power of excepting the municipality from those provisions.

"I do not think, my Lord, that there is any other provision of the Bill which requires notice. The expansion of the municipal law from an Act of twenty-three sections to an Act of 147 sections has been disapproved of by

some of those who have criticised the Bill; but I fear this cannot be helped. As the country progresses, new wants arise and legislation is required to provide for matters which sixteen years ago gave rise to no difficulties. It is a matter for congratulation that municipal institutions have so prospered that they have outgrown the law which formerly sufficed for them, and I trust that this measure will be found to supply the deficiencies in the present law and to assist the committees in the administration of municipal affairs. There are few provisions in the Bill which have not already been in force in the Central Provinces or in other provinces; and the law, therefore, contained in the Bill is for the most part a law which has already been found by experience to work satisfactorily."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that the words and figures "or of a sub-committee appointed under section 19" be added to clause (*b*) of section 10 of the Bill. He said:—

"This clause gives the Local Government power to remove any member of a committee who without an excuse sufficient in the opinion of the Local Government absent's himself for more than three consecutive months from the meetings of the committee. The object of the amendment is to show that members of a sub-committee appointed under section 19 who duly attend the meetings of the sub-committee are not liable to removal from office if they fail to attend the meetings of the committee. Section 19 of the Bill is intended to provide for the appointment of a sub-committee to manage any ward or wards for which, owing to peculiar circumstances, a committee possessing special knowledge or other qualifications is required. For instance, for the civil station of Nagpur, which is situate within the Nagpur municipality, it has been found expedient to appoint a sub-committee including among its members persons who understand the wants and requirements of the European residents. When a ward in a municipality is entrusted to a sub-committee to manage, the principal duty of the members of the sub-committee will be to attend to the business of that ward, and they will not be concerned with the executive administration of other wards. They will not, therefore, be ordinarily required or expected to be present at the meetings of the committee."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that the following be substituted for section 117 of the Bill:—

"117. If the owner or the person in possession of any food or drink or animal which is seized under section 65, sub-section (*1*), does not consent to the destruction or disposal of the same, the Magistrate, if it is proved that the food or drink or animal was intended for the consumption of man and is unfit thereor, may order the food or drink or animal to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for the consumption of man, and may direct that such owner or person shall be punished with fine which may extend to one hundred rupees:

Penalty for possession of food, drink or animal unfit for consumption.

"Provided that a person who is in possession of food or drink or of an animal as a carrier or bailee thereof shall not be liable to a fine under this section."

He said:—

"This amendment is merely an amendment in the drafting, and is proposed with the view of making the provisions of the section clearer regarding the power of the Magistrate to order the destruction or disposal of the food, drink or animal which has been seized under section 65 and which is proved to be unfit for the consumption of man. Sections 65 and 117 of the Bill are adapted from the Punjab Municipal Act, 1884, and Bengal Act III of 1886. Section 65 gives the committee power to enter into and inspect places used for the sale of articles intended for food or drink for man or as a slaughter-house, and to seize and remove any article of food or drink or any animal which appears to be intended for the consumption of man and to be unfit therefor. If the owner or the person in whose possession the article or animal is found consents, the article or animal may be destroyed or so disposed of as to prevent its being exposed for sale or used for the consumption of man. If the owner or person does not consent, then under section 117 a Magistrate, if it is proved that the food or drink or animal was intended for the consumption of man and is unfit therefor, may order the food or drink or animal to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for the consumption of man and may also fine the owner or person in whose possession it was seized."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

CENTRAL PROVINCES CONSERVANCY BILL.

The Hon'ble MR. CROSTHWAITE also moved that the Report of the Select Committee on the Bill to make better provision for Conservancy in Villages in the Central Provinces be taken into consideration. He said :—

"This Bill, drafted on the lines of a measure prepared by Mr. Mackenzie, the Chief Commissioner, is an attempt to effect a reform in the sanitary condition of the villages in the Central Provinces, and is based on the principle that village-sanitation can best be carried out with the co-operation of the villagers themselves. It has been seen that municipalities can satisfactorily manage the sanitation of towns, and it may, therefore, be hoped that in the larger villages the inhabitants will, if given the necessary powers, follow the example of municipalities and improve the condition of their villages. The measure, accordingly, has been framed with the view of enabling the authorities to enlist on the side of sanitary reform local knowledge and popular sympathies and to make use of the power of local self-government which has always existed in some form or other amongst the village-communities. I have already on a former occasion given an outline of the provisions of the Bill. Like the enactments which were first framed for the constitution of municipalities, they are very simple and leave a great deal to the discretion of the Local Government, because it is considered that the provisions of a new and tentative measure of this kind should be elastic, so as to enable the Government to ascertain by practical experiment how the intention of the Legislature can best be carried out. It is necessary also to proceed with great caution, to show the people that the sanitation of their villages is possible and is for their benefit, and to avoid any action which might irritate them and arouse opposition.

"The plan of the Bill is briefly as follows. In the first place, its provisions can be applied only to a village of a certain size which the Deputy Commissioner declares by an order in writing to be in an insanitary state. When this declaration has been made, the Local Government may, either on the application of the mukaddam, or village-headman, and ten or more of the inhabitants of the village, or, if they do not apply, on the application of the Deputy Commissioner, extend the Act to the village. Then a panchayat is to be formed consisting of the mukaddam, and of persons elected by the inhabitants. The panchayat will determine the sum which will be annually required for the conservancy of the village, the provision of a supply of wholesome water and the maintenance of the roads

in the village, and it will proceed to raise this sum by an assessment on the houses and lands within the village. This assessment will require the sanction of the Local Government, to which also is given power to make rules regarding the election and term of office of members of the panchayat, the amount of the taxes which can be imposed, the regulation of conservancy, the defining of nuisances, and other matters.

"The opinions on the Bill are generally favourable and the alterations which have been made in Select Committee are few and not of much importance. We considered that the number of inhabited houses in a village would be a better condition for the application of the Act than the number of inhabitants. In section 2 of the Bill, therefore, the words 'a village containing not less than one hundred inhabited houses' have been substituted for the words 'a village containing not less than three hundred inhabitants.' We have given to the Local Government power to direct that there shall be more than four members on a panchayat, and we have struck out clause (*d*) of section 4 of the Bill, which authorized the expenditure of money on village-schools, inasmuch as we considered that money raised by taxation under the Act should be spent on the sanitation of the village and not on education. The maximum fine which can be imposed for the breach of a rule made under the Act has been reduced to ten rupees. The other amendments do not, I think, call for remark.

"The measure, my Lord, is new and experimental, and in asking the Council to pass it I may say that I am assured that its provisions will be worked with caution, and discretion, and that there is no intention of carrying out a sudden and extensive reform in the sanitation of the villages."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

ACT XXXVI OF 1858 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to amend Act XXXVI of 1858 (*Lunatic Asylums*) be taken into consideration. He said:—

"I have to move regarding a Bill which I introduced at Simla to amend

the law relating to asylums for lunatics. I then explained fully the defects in the existing law which it is sought to remove, and I would not trouble the Council with any further observations but for the fact that there are several Hon'ble Members here now who were not present on that occasion. For their benefit I will state the provisions of the measure very shortly.

"In 1886 it was found that the law required the lunatics of each province to be sent to an asylum established by the Local Government of that province, but, as some provinces were unable to maintain separate asylums, the Government of India took power to appoint asylums elsewhere to which the Magistracy of such provinces might commit insane persons brought before them. It has now been brought to notice that, even when a Local Government has established an asylum within its own limits, there may be some parts of its territory more conveniently situated with regard to an asylum in some other province. I therefore proposed to extend the power to appoint an extra-territorial asylum to cases in which the provincial asylum is not conveniently situated with respect to any part of the province, or does not provide sufficient accommodation for the whole of it: and to these cases in Select Committee we have added one other, namely, the case in which the accommodation contained in the provincial asylum is unsuitable for any particular class of lunatics, such as females. All these cases will now be found provided for in the first section of the Bill on the table.

"The second section merely gives to Local Governments and the Government of India in respect of the transfer of civil lunatics from one asylum to another the same powers which they already possess in regard to criminal lunatics. A Local Government is authorized to transfer such persons within its own limits, but when it is desired to move them from one province to another an order of the Governor General in Council is required.

"By the third section an old enactment is repealed which vested in the Inspector of Jails a power similar to that now conferred on the Local Government. This has become obsolete since lunatic asylums are no longer under the Jail Department.

"It will be seen that the Bill is of a very simple character."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Friday, the 20th December, 1889.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 18th December, 1889.

Government of India Central Printing Office.—No. 326 L. D.—19-12-89.—308.—Jos. deC.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 20th December, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I, G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble G. H. P. Evans.

The Hon'ble Muhammad Ali Khan.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Sir A. Wilson, Kt.

ACT XXV OF 1867 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved for leave to introduce a Bill to amend Act XXV of 1867 (*Printing-presses and Books*). He said :—

"The Bill which has been prepared comprises eight sections, but of these only one is really important. I have taken advantage of this opportunity to bring the Act of 1867 more into harmony with recent legislation, but there is no material change involved in such formal amendments; they may be left for examination by a Select Committee, and I need not trouble the Council at large by entering into explanations regarding them. The main object of the measure is to repeal that portion of section 10 of the Act which requires that the publisher

of a book shall be paid, for the three copies which have to be delivered to Government under the ninth section, at the rate at which the book is *bonâ fide* sold for cash to the public. The Government is of opinion that the time has now come for requiring the presentation of these copies without payment, as in England.

"The law of the United Kingdom upon this point is contained in the Copyright Act of 1842, 5 & 6 Vict., cap. 45. This requires the gratuitous supply of every publication to the British Museum without demand, and to four other libraries—at Oxford, Cambridge, Edinburgh and Dublin—upon demand. The Bill which I am about to present for the consideration of Council follows the same lines. Two copies must be furnished without demand and two additional copies only if demanded. The present law requires three copies—for the Secretary of State, for the Government of India and for the Local Government; but the Secretary of State's copy is not always transmitted to him, and there is no reason why its delivery should be made compulsory otherwise than on demand. Like the British Museum, His Lordship makes a selection of the books which he desires from the periodical catalogues of Indian publications.

"I have just said that the present law requires three copies to be supplied, but I ought rather to have said that this is what the Act of 1867 requires. The English Statute extends not only to the United Kingdom, but 'to every part of the British dominions,' and might be enforced in India at any time. So that every publisher in this country is really under a legal obligation to furnish three copies on payment, one gratuitously without demand, and four others without payment if demanded; and I need hardly say that, if the law were fully enforced, a demand would always be made in the case of books possessing any real value, which alone can be considered deserving of protection. From this point of view it will be seen that my proposal cuts down and does not extend existing liabilities. Indeed, one of the principal reasons advanced in 1867 for enacting that the publisher should be paid was that he might at any time be required to furnish five additional copies for English libraries.

"The Hon'ble Mr. Hobhouse said at the time:—

"'The Statute might be enforced at some future time, and then, if the proposed Act did not provide for paying the publisher, he would be compelled to deliver no less than eight copies without remuneration. Now, this, especially in the case of valuable works, which, besides the letter-press, contained prints or photographs, would be rather a hardship on the publisher.'

"I regret that I cannot absolutely bar the application of the Statute to India. But no claim to receive Indian books under it has ever been put forward except by the British Museum. The demands of the Museum will now be fully provided for, and I may safely say that there is no likelihood whatever of the Statute being put into force here for the benefit of other libraries. Any such proposal would be met by insuperable objections.

"But now it may be said, why this parsimony? The Government has for twenty years been paying for its copies; why should it now place this burden upon Indian authors and publishers whom it really wishes to encourage? Before answering this question I will interpose a very few words to show that the burden is really insignificant. Hon'ble Members are well aware that in this country many copies of every work are presented to the author's friends and to persons occupying high stations; it is hardly a matter for complaint that he should be required to present two or even four more to the Empire at large. The Act secures to him the copyright of his book as soon as it has been registered under its provisions, and it is no great hardship that he should have to give these few copies in return for such advantages. Cost price alone has to be considered, and the burden is surely too slight to impose any appreciable check on the production or publication of books. It may seem to follow at first sight that it would be no great burden on the public finances to pay for the copies required, but there is all the difference in the world between cost price and the price which the publisher may choose to put upon a work and which Government may be compelled to pay. But the main object of the change which I propose is not a paltry economy. I will now explain how the proposal originated.

"When introducing the Bill which became Act XXV of 1867, the Hon'ble Mr. Hobhouse took some pains to justify the provision for payment and the departure from the English principle which I now wish to repeal, and in the course of his speech he alluded to certain arguments which had been put forward on the other side. One of them he dealt with in these words:—

"'There might, it is true, be some sort of fraud perpetrated on Government, in the case of a man publishing a trumpery book, getting a few dishonest friends to conspire to buy copies at a high rate, and then compelling the Government to purchase the book at an exorbitant rate; but that is precluded by the clause which provides that the price shall be that at which the book is *bonâ fide* sold for cash to the public.'

"My Lord, the apprehension that extravagant prices might be demanded has been fully realised, the safeguard supposed to be provided by the clause as to

bonâ fide price has not always proved effective, and I submit that it is neither fair nor becoming that the Curator or other officer appointed to take delivery of books should constantly have to institute secret enquiries in order to ascertain if the ostensible price is not fictitious, and in some cases even to prevent his being swindled.

"This may seem somewhat strong language, but I think I shall be able to justify it later on, if not by the very first instances which led to the question of payment being mooted. These occurred in the Bombay Presidency. A Collector reported that he had received three copies of each of three books for registration under the Act. Two of them were Persian poems in praise of two Parsi gentlemen, of which six and eight copies respectively had been printed, and the price was fixed at no less than Rs. 25 a copy. The third was an English publication, entitled 'A short sketch of the life of the late lamented Sir Maxwell Melvill.' This proved, however, to be a mere collection of extracts from that history of the services of gazetted officers with which most Hon'ble Members are well acquainted, and from the laudatory notices of that distinguished judge and officer which had been published in the Bombay newspapers shortly after his decease. One hundred copies of this compilation had been printed and the price was Rs. 10 for each. The claim of Rs. 75 for each of the poems was resisted, and I believe successfully, but the obituary notice of Sir M. Melvill cost the State Rs. 30, though it can hardly have been worth as many annas.

"The remedy first suggested by the Government of Bombay was that the Government of India should, under the power reserved by the twenty-first section, exclude from the operation of the Act 'books which the Local Government might determine to have been written in praise or memory of particular persons in the hope that they will be purchased by, or with the intention that they shall be distributed amongst, those persons' friends or admirers.' It is obvious, however, that this would be no sufficient guide to the printer, to whom the obligation attaches to furnish the three copies of every book which he prints. Moreover, unless the Local Government were abnormally careful, such a provision might exclude such a book as In Memoriam, and for all I know the Persian poems to which I have alluded may have been as full of beauty, pathos and true poetry as that immortal work of our own Laureate.

"We then consulted Local Governments as to whether the law might not be amended as I now propose to amend it, and the replies have been absolutely unanimous in favour of the suggestion. They show further that very gross

instances of extravagant and even fraudulent prices have come to light in almost every part of the country. In one place (not in the Bombay Presidency) an anonymous work called 'A General System of Book-keeping newly devised by a Business Man' had been submitted for registration, and Rs. 100 demanded as the price of each of the three copies furnished. This demand of Rs. 300 would have covered the whole cost of printing a considerable edition, but the Curator was quite unable to ascertain at what price the work was *bonâ fide* sold. It is doubtful if even a single copy was sold to any *bonâ fide* purchaser. From yet another part of India the Curator furnished a long list of unfair practices which had been resorted to within his own experience in order to increase the demand upon Government. They seem worth the notice of the Council, and I will ask permission to read them as they stand, merely suppressing names and similar particulars :—

"'(1) Sometimes two prices are fixed—one for those who are able to pay, and another for those who are poor. (A person whom I will call) X put on his work on (a subject which shall be nameless) a price of Rs. 25 for those able to pay and a price of four annas only for those who are not able to pay, and succeeded in getting Rs. 75 from Government.

"'(2) Two pricesare often fixed—one very high for bound copies ; another, smaller, for unbound copies of the same edition ; and the bound copies are delivered to Government.

"'(3) It often happens that the cover of the book only undergoes fresh printing for fresh editions, the book itself not being reprinted. I was rather surprised to find, while compiling the catalogue for the second quarter of 1888, that a work had undergone two editions within ten days of each other. The second edition showed no sign of having been printed anew,' and Government had to pay for six copies of what was really one edition.'

"If these tactics were repeated, payment for nine, twelve or even more copies might have been extracted.

"'(4) Certain charts (on a subject which I need not mention) are each one sheet of paper, only printed on one side ; the subject-matter may be anything unintelligible, but it has nothing to do with the subject named. The author (whom I will call) Y sends two or three charts every quarter, and charges one rupee for each sheet. Yet Government can hardly refuse to pay for such works on the ground that they appear to be anything but what they profess to be.

"'(5) No reliance is to be placed on the price given on the title-page of any work published at Z. The books are hawked all over the country by a class of men, who refuse to accept books unless a high price is shown on the title-page, which enables them to charge high prices upon ignorant villagers in the interior.'

"I think this will be enough to satisfy the Council that the provision of law which I seek to repeal has a most demoralizing effect, while in many instances it certainly entails a very unfair and exorbitant charge on the public revenues. I have also endeavoured to show that its repeal will not entail appreciable hardship on authors or publishers, while it will assimilate the law of India to that of the United Kingdom. For all these reasons I submit that the measure is a desirable one and I ask that it may be entertained.

"I only wish to add that I am making enquiries in the Home Department as to how far the collections of books received under the Act by the Government of India and Local Governments are or can be made available to the public at large. The Act certainly contemplates that the books of the Local Government shall, when possible, be deposited in a public library, and I have reason to believe that this is done in some Provinces, though not in all."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also introduced the Bill.

The Hon'ble MR. HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

FOREST BILL.

The Hon'ble MR. HUTCHINS also moved that the Hon'ble the Mahárájá of Vizianagram be added to the Select Committee on the Bill to amend the Indian Forest Act, 1878, the Burma Forest Act, 1881, and the Upper Burma Forest Regulation, 1887.

The Motion was put and agreed to.

GUARDIANS AND WARDS BILL.

The Hon'ble MR. SCOBLE moved that the Hon'ble Mr. Hutchins, the Hon'ble Syud Ameer Hossein, the Hon'ble Rájá Durga Charn Laha and the Hon'ble Mr. Crosthwaite be added to the Select Committee on the Bill to consolidate and amend the law relating to Guardian and Ward.

The Motion was put and agreed to.

ACTS VI AND VII OF 1884 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Hon'ble Sir Alexander Wilson be added to the Select Committee on the Bill to amend Acts VI and VII of 1884 (*Inland Steam-vessels and Indian Steamships*).

The Motion was put and agreed to.

The Council adjourned to Friday, the 3rd January, 1890.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 23rd December, 1889.

Government of India Central Printing Office.—No. 341 L. D.—24-12-89.—308.—Jos. deC.

INDEX

TO

ABSTRACT OF PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

VOLUME XXVIII.

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